ment is on file with the Commission. The certificate is restricted to general commodities over regular routes and between points on the railroad.

Under the M.-K.-T. plan of operation using vehicles of the Columbia Truck Leasing, Inc., formerly the Columbia Transfer Company, the rail lines are paralleled by substituted rail-highway coordinated service pursuant to the cer-
[fol. 2518] tificate referred to. The lessor, the Columbia Truck Leasing, Inc., furnishes the vehicles and experienced drivers and other personnel at a stated rental per truck-mile.

Under our plan of operation only railroad employees deal with the public. Lessor furnishes the vehicles and experienced drivers at a stated rental per mile. More specifically, the plan provides (a) the contractor, the Columbia Truck Leasing, Inc., will furnish truck equipment to meet railroad requirements, type, and specifications; (b) shall comply with State and federal regulations; (c) vehicles shall be permanently painted showing name of carrier and certificate number as requested by carrier; (d) the contractor makes such trips over such routes and on such vehicles as directed by the railroad's representative; (e) all persons assigned to the performance of service of carrier shall, when so assigned, be subject to rules and regulations, controls, and requirements of carrier, and all such persons, including but not limited to chauffeurs, shall be satisfactory to carrier's officers.

The railroad, in complying with the Interstate Commerce Commission's regulations, requires that lessor file accident reports, hours of service reports, and other forms which are required by the Commission's safety regulations. The drivers' logs are maintained on the premises of lessor for the time prescribed by the Commission, and are available for inspection by Commission's personnel at all times.
[fol. 2519] Copies of these reports are maintained by the railroad in compliance with the Commission's regulations, and are regularly available for inspection by Commission employees at any time.

The operational plan is one that has previously been approved and would not therefore come within the pro-

posed regulations. In that connection, see paragraph (k) thereof.

Under the plan of operation all contacts with the public are by railroad employees; all shipments handled move under rail billing at rail rates. Technical details in connection with the handling of those shipments are the same as though the shipments moved by rail.

The vehicles which are operated under certificate issued to the M.-K.-T. Railroad are under long-term leases, must comply with safety provisions, and are amply covered by liability insurance.

We believe that since the leasing plan has been thoroughly considered by the Commission who has found no fault with the arrangements under which the motor carriers' operations are being conducted, paragraph (h) of Rule 2 should not apply to the M.-K.-T. railroad operations inasmuch as paragraph (k) of the rule exempts operation of equipment by any carrier in accordance with a plan heretofore submitted by such carrier in a formal proceeding, and specifically approved by the Commission.

If, however, our company is not exempt from the require-
[fol. 2520] ments of Rule 2, paragraph (h), it is respectfully requested that an exemption be made in order to permit it to continue to conduct its operation under a lease arrangement whereby the motor vehicles, with drivers, may be leased as already described, which plan, as stated, has previously had consideration by the Commission.

Q. Does that conclude your statement, Mr. Werlla?

A. Yes, sir.

Exam. Lawton: Is there any cross-examination?

Cross-examination

By Mr. Ellis:

Q. Your company is operating as a motor carrier under certificate issued by the Commission?

A. Yes, sir.

Q. At the St. Louis hearing the Illinois Central Railroad testified they operate under somewhat similar circumstances. Are you familiar with that?

A. I did not attend the St. Louis hearing.

Q. In any event, as I understood their position, they thought probably their operations were exempt under some of these rules. Mr. Eldred is representing a lot of railroads in this case who want the most drastic regulations placed on motor carriers. Do we understand that railroads don't want any regulations to apply to them but do want the motor carriers regulated? Is that your position?

A. I cannot say it is, no.

[fol. 2521] Q. You are here claiming that you are exempt from any proposed regulations. That is right, isn't it?

A. I claim our plan of operations has been approved and therefore should be exempted.

By Mr. Lordan:

Q. Do I understand your plan of operation had been submitted to the Commission at the time of your hearing on an application for certificate?

A. That is correct.

Q. And all of the details of your application were submitted to the Commission?

A. That is right.

Q. Including the contract under which you operate with this Columbia Trucking Company?

A. That is correct.

Q. Is that the same contract that you are now operating under that was submitted to the Commission?

A. The same contract, yes.

Mr. Lordan: I have no further questions.

By Mr. Pou:

Q. Mr. Werlla, I have only one question: You referred in your written statement to the numbers of certain paragraphs and sections of the proposed rules. Did you have reference to the proposed rules or regulations which were attached to the order issued in connection with this case?

A. That is correct.

Mr. Pou: That is all.

[fol. 2522] Redirect examination

By Mr. Blaine:

Q. The agreement you referred to is now on file with the Interstate Commerce Commission?

A. That is right.

Mr. Blaine: I might state that Mr. Eldred does not represent the M.-K.-T.—that is, the Mr. Eldred referred to by Mr. Ellis.

Exam. Lawton: Is there anything further of this witness?

(No response.)

(Witness excused.)

Exam. Lawton: I understand there are some additional appearances.

Mr. Burstein: Herbert Burstein of Zelby, Burstein & Reich, 135 Broadway, New York City, an attorney-at-law and admitted to practice before the Commission. I appear on behalf of the Independent Movers and Warehousemen's Association, Inc., and the Motor Carrier Association of New York.

Exam. Lawton: Are there any more witnesses for the railroads?

Mr. Holmes: Mr. Barnes on behalf of the Missouri Pacific has a prepared statement which I shall be happy to distribute. I don't believe this will take very long.

Mr. Brown: Mr. Examiner, is it your intention to get rid of all railroad witnesses at present? We will have a witness who will take only 10 or 15 minutes this morning.

Exam. Lawton: If we reach a point where we will have to [fol. 2523] stop and no one else is ready we will call you.

E. F. Barnes, Jr. was sworn and testified as follows:

Direct examination

By Mr. Holmes:

Q. Give your name to the reporter, please, also your address and occupation.

A. E. F. Barnes, Jr., special assistant to general superintendent of transportation, Missouri Pacific Railroad Company, St. Louis, Mo.

Q. Do you have direct supervision of the operation of the trucks operated by the trustee of Missouri Pacific Railroad pursuant to a certificate held by the trustee?

A. I do.

Q. For the purpose of this case, have you prepared a statement which has been distributed in the room explaining the plan of operations of the trustee of the Missouri Pacific Railroad?

A. I have.

Q. Is that statement true and correct?

A. It is.

Mr. Holmes: Off the record.

Exam. Lawton: Off the record.

(Discussion off the record.)

Mr. Lordan: I have no objection to the statement being set forth in the record as if read by the witness.

Exam. Lawton: Hearing no objection, the statement is [fol. 2524] ordered copied in the record.

The Witness: The Missouri Pacific Railroad under authority of the Commission, Docket MC-44609, Subs 1 to 36, inclusive, now operates a coordinated rail-highway service. Its plan of operation and copies of agreements were fully explained at time of its original hearing, 22 M.C.C. 321, and the operating agreements, though amended from time to time, have been on file with the Commission.

Those certificates are restricted to "general commodities over regular routes" and between points on railroad and are subject to the usual conditions imposed in railroad cases requiring that the truck operations be supplementary and auxiliary to rail service.

Under the Missouri Pacific plan of operation using the vehicles of the Columbia Trucking Leasing, Inc.—formerly the Columbia Transfer Company,—a substantial portion of the rail lines are paralleled by substituted rail-highway coordinated service pursuant to the certificates referred to. The lessor furnishes the vehicles and experi-

enced drivers and other personnel at a stated rental per truck-mile.

Under our plan of operation only railroad employees deal with the public. Lessor furnishes the vehicles and experienced drivers at a stated rental per mile and more specifically the plan provides (a) the contractor will furnish truck equipment to meet railroad requirements, type and [fol. 2525] specifications; (b) shall comply with State and federal regulations; (c) shall be painted as requested by carrier, carrying Missouri Pacific emblem; (d) the contractor will also supply an adequate force with equipment in good operating condition and supplied with fuel and lubricants; (e) will make such trips over such routes and on such schedules as directed by the railroad's representatives; and (f) all persons assigned to the performance of service of carrier shall when so assigned be subject to rules and regulations, controls and requirements of carrier and all such persons including but not limited to chauffeurs shall be satisfactory to carrier's officers.

The railroad, in complying with the Interstate Commerce Commission's regulations, requires that lessor file accident reports, hours of service reports, and other forms which are required by the Commission's safety regulations. The drivers' logs are maintained on the premises of lessor for the time prescribed by the Commission and are available for inspection by Commission personnel at all times. Copies of these reports are maintained by the railroad in compliance with the Commission's regulations and are readily available for inspection by Commission employees at any time, having regard to the restricted type of certificates issued to the Missouri Pacific and particularly the fact that the operational arrangements were at the original hearing exhibited to the Commission and have at all times been on file with the Commission. The operational plan is one that [fol. 2526] has previously been approved and would not therefore come within the proposed regulations. In that connection see paragraph (k) thereof.

Under the plan of operations all contacts with the public are by railroad employees; all shipments handled move under rail billing and rail rates. Technical details in connection with the handling of those shipments are the same

as though the shipments moved by rail. The vehicles which are operated under certificates issued to Missouri Pacific are under long-term lease and under full control of the carrier, and must comply with safety provisions and are amply covered by liability insurance and fully responsible for compliance with hours of service provisions.

We believe that since the leasing plan has been thoroughly considered by the Commission who have found no fault with the arrangements under which the motor carrier operations are being conducted, paragraph (h) of Rule 2 should not apply to the Missouri Pacific Railroad operation, inasmuch as paragraph (k) of the rule exempts "operation of equipment by any carrier in accordance with a plan heretofore submitted by such carrier in a formal proceeding and specifically approved by the Commission." If, however, our company is not exempt from the requirement of Rule 2, paragraph (h), it is respectfully requested that an exemption be made in order to permit it to continue to conduct its operations under a lease arrangement whereby [fol. 2527] the motor vehicles, with drivers, may be leased as already described, which plan, as stated, has previously had consideration by the Commission.

Exam. Lawton: Cross-examine.

Cross-examination

By Mr. Ellis:

Q. Is your company a member of the Rail Carriers Trunk Line Association?

Mr. Holmes: I assume you are referring to Mr. Eldred's representation here. I do not believe that includes any of the companies on whose behalf Mr. Barnes is presented, but I will say that he is represented by Mr. Nisbet, besides myself.

By Mr. Ellis:

Q. Then I take it the Western Rail Carriers have taken a somewhat different position in this case from Eastern Carriers?

A. I am not familiar with the position of the Eastern Carriers.

Mr. Ellis: That is all.

By Mr. Diehl:

Q. Mr. Nisbet represents the western carriers in a capacity similar to that Mr. Eldred occupies as to the eastern carriers. Do you know those two gentlemen?

A. I know Mr. Nisbet.

Q. Is it true Mr. Nisbet represents the western carriers in this proceeding?

A. As to certain matters.

Q. Does he represent your company as to certain matters?

A. Yes.

[fol. 2528] Q. If his position differs, as to the western carriers, from that you have taken on the witness stand, which is correct?

Mr. Holmes: I think the position is very clear insofar as the operational plan of the Missouri Pacific is concerned, and I think what he has stated is supported insofar as the facts of the operation are concerned. With respect to what Mr. Nisbet is contending for on behalf of the railroads as an industry, I think that is an entirely different matter and is not inconsistent.

Exam. Lawton: All the witness is here for is to explain the operation?

Mr. Holmes: And that the contract at the time of the application for the initial certificate was presented to and considered by the Commission.

Mr. Diehl: The witness' statement concludes, I believe, by saying "If, however, our company is not exempt," etc., and he asks him to exempt them.

By Mr. Diehl:

Q. Are you contending for a rule to apply to railroads which you would limit to the railroads and not extend to any trucking company?

Mr. Holmes: I object.

Mr. Diehl: I withdraw that.
That is all.

By Mr. Edward Wheeler:

Q. As I understand it, you have no objection to the rules contained—to the Commission applying or putting [fol. 2529] into effect the rule contained in Rule 2 of the notice of proposed rule making in this proceeding?

A. My position is we should be exempted from those rules inasmuch as we are amply covered by the regulations now in existence.

Q. If I understand you correctly, you take an alternate position, and that is that you have no objection to the rules providing paragraph (h) of Rule 2 does not apply to the Missouri Pacific. That is the paragraph which makes the person assigned to drive the equipment the employee of the carrier. Am I correct in that assumption?

A. That is one to which as to operating responsibility I take exception.

Q. But you have taken no exemption as to the rest of the rules?

A. No.

Q. That I want to be clear on the record. Is that correct?

A. That is correct.

Mr. Edward Wheeler: That is all.

By Mr. Pou:

Q. Mr. Barnes, I notice that your written statement contains this statement: "The railroad, in complying with the Interstate Commerce Commission's regulations, requires that lessor file accident reports, hours of service reports, and other forms which are required by the Commission's safety regulations."

Would you say it is the responsibility of the railroad or of [fol. 2530] the lessor to see that those reports are accurate when they are filed?

A. It is the responsibility of the railroad to know whether they are filed and to see that they are accurate.

Q. So you don't take it that is a dodging by the railroad of its responsibility placed on it as a carrier by the regu-

lations, to see that these reports are accurate and to see that they are filed?

A. No, sir.

Q. Whose responsibility is it; that is, the railroad's or lessor's, to see that the drivers observe the safety regulations and do not exceed the prescribed hours, and to see to it that the drivers make true and correct daily logs?

A. Our contract with the lessor requires them to check those reports and comply with all the regulations of the State and federal laws.

Q. Does the railroad have any method of checking the logs to see whether or not they are accurate, and checking the reports to see whether or not they are accurate?

A. We go into their offices at intervals and they are available at all times.

Mr. Pou: That is all.

By Mr. Wells:

Q. Mr. Barnes, I have just a couple of questions. I take it that in your actual operations the drivers of the trucks are not on the pay roll of the railroad?

[fol. 2531] A. They are not.

Q. And you have no record of who they may be, and do not carry their names on your rolls at any time as employees?

A. We do not.

Q. Do you exercise any supervision over the details of operation such as which truck shall be operating on a particular route, or what driver shall operate a particular truck?

A. No.

Mr. Wells: That is all.

By Mr. George:

Q. Mr. Barnes, in your statement you stated as follows: "Under our plan of operation only railroad employees deal with the public." Do these drivers have any dealings with the public?

A. None whatsoever.

Q. Not as to safety of operations, courtesy on the highway, or anything of that kind?

A. No more than any other driver of any other vehicle.

Q. What contact with the public do you have reference to?

A. Our employees do all of the dealings with our shippers, handling of way bills, billing of freight, making charges, and so forth.

Q. And then your statement should be that your rail employees deal with the shipping public and the traveling public are dealt with by the drivers of the vehicles who are not your employees. Isn't that true?

[fol. 2532] A. I don't know of any way that they deal with the traveling public.

Mr. George: That is all.

Mr. Holmes: I have entered my appearance on behalf of the trustee of the New Orleans, Texas & Mexico Railway, and the trustee of the New Iberia & Northern Railway Company.

The New Orleans, Texas & Mexico operates exactly the same as explained by Mr. Barnes under certificate MC-54452, Sub 1, and the New Iberia & Northern operates under a certificate in MC-54477, Sub 1.

I merely want to record those for future reference because the plans of operation are identical and I do not feel it is necessary to repeat the story again.

Can it be stipulated that is true?

Mr. Ellis: Do they also lease from the Columbia Company?

Mr. Holmes: Yes.

Exam. Lawton: It is stipulated that the motor operations of that railroad are the same as those testified to by the witness.

(Witness excused.)

VICTOR R. KAHLEY was sworn and testified as follows:

Direct Examination

By Mr. Eisen:

Q. State your name and address.

A. Victor R. Kahley, 128 Atkins Avenue, Lancaster, Pa.

Q. What are your business affiliations?

[fol. 2533] A. Vice-president of Northland Petroleum Transportation Company.

Q. Are you a tank truck operator?

A. Yes, sir.

Q. Of what commodities?

A. Liquid petroleum products.

Q. Only?

A. Only.

Q. Mr. Kahley, what is the basis of your rates and charges to the public?

A. All rates are based on mileage.

Q. Are all your rates, without exception, based upon a mileage scale?

A. Yes, sir.

Mr. Eisen: That is all I have.

Cross Examination

By Mr. Hernley:

Q. Are you familiar with all the carriers operating along the Atlantic Seaboard in the general territory of your company?

A. Yes, sir.

Q. Are you familiar with the fact of whether their rates are predicated on a mileage basis?

A. Yes, sir.

Mr. Hernley: That is all.

Exam. Lawton: That is all.

(Witness excused.)

[fol. 2534] R. C. CUNNINGHAM was sworn and testified as follows:

Direct Examination

By Mr. Wrape:

Q. State your name and address.

A. R. C. Cunningham, Oklahoma City.

Q. In what business are you engaged?

A. President and general manager of United Transports, Inc.

Q. And its principal headquarters?

A. Oklahoma City, Okla.

Q. It is engaged in what business?

A. Common carriage of automobiles by motor vehicle, using the driveaway and truckaway methods.

Q. Does your company hold a certificate from the Interstate Commerce Commission?

A. We do. Certificate of Public Convenience and Necessity No. MC-71902 and sub numbers.

Q. How long has your company been engaged in that business?

A. It and its predecessors have been so engaged since 1929.

Q. How long have you been engaged in this business?

A. Since 1932.

Q. What are your principal motor carrier operations?

A. It is a truckaway operation from St. Louis and Memphis, Tenn., to points and places in the States of Missouri, Kansas, Oklahoma, Texas, Arizona, and New Mexico in which our company performs a so-called secondary or subsequent movement involving the delivery to con-

[fol. 2535] signee located in the States just mentioned.

Q. What do you mean by a truckaway operation?

A. In our industry we have two methods of operations, which we call driveaway and truckaway. In a truckaway operation we load the cargo; that is, motor vehicles; upon the specially designed trailer of a tractor-semi-trailer unit and haul to our destination. Of course, in a driveaway operation, the cargo is driven to destination over the highway, using the cargo itself for propulsion.

Q. How many of these specially designed tractor-trailer units do you operate?

A. We operate 141 tractor-semi-trailer units and 26 extra tractors.

Q. How does your fleet compare today with that operated prior to the war?

A. In 1941 we operated approximately the same number of units we operate today.

Q. Could you give us some idea of the volume of your business?

A. For our past fiscal year, ending November 30, 1948, we handled 45,466 vehicles and our portion of the through revenue amounted to $2,707,311.47.

Q. How many employees do you have?

A. We now have more than 300 employees.

Q. Do you maintain terminals in your business?

A. Yes, we have terminals at Houston, Dallas, Texarkana, [fol. 2536] Texas, Oklahoma City, Okla., Joplin, Mo., Memphis, Tenn., and St. Louis, Mo. The latter-named terminal is shared with Commercial Carriers, Inc., another motor carrier with whom we maintain close interchange and interline relationships.

Q. Are there common stockholders, directors, or officers who control or other similar relationship existing between your company and Commercial Carriers, Inc.?

A. None whatever.

Q. Now, you said that your principal volume of traffic was handled from Memphis and St. Louis to the Southwest. Is this automobile traffic manufactured at either St. Louis or Memphis?

A. It so happens that automobile assembly plants are maintained at both of these points; however, we receive little or no traffic which has been manufactured or assembled at either Memphis, Tenn., or St. Louis, Mo. At Memphis, our traffic is delivered to us, and interlined to us by Commercial Barge Lines, a water carrier. At St. Louis, our traffic is delivered to us by a number of common carriers by motor vehicles who operate from practically all of the automobile manufacturing origins. From either interchange point, that is Memphis or St. Louis, we perform the destination delivery in our certificated territory.

Q. What portion of your total traffic is moved in interline service?

A. In excess of 90 percent.

[fol. 2537] Q. And for how long has that condition existed?

A. From St. Louis since 1934. Prior to that time we operated single-line service from the various northern manufacturing points to our present destination territory. Our interline service out of Memphis was inaugurated immediately following the war.

Q. Is your company certificated to conduct initial movement operations from northern manufacturing points at the present time?

A. We have driveaway authority from Fort Wayne, Ind., and Springfield, Ohio. All of our truckaway operations are conducted west of the Mississippi River, except from Memphis, Tenn.

Q. What makes of vehicles do you handle?

A. We deliver all of the popular makes; that is, Buicks from Flint; Oldsmobiles from Lansing; Pontiacs from Pontiac; Willys from Toledo; Studebakers from South Bend; Nashes from Kenosha, Plymouths from Evansville; Crosleys from Marion, and Cadillacs, Hudson, Packards, Dodges, Plymouths, DeSotos, and Chryslers from Detroit. The Detroit traffic would constitute our largest volume.

Q. How is your traffic divided as between the St. Louis and Memphis gateways?

A. About evenly.

Q. I believe you stated that traffic at Memphis is received [fol. 2538] from a barge line and that at St. Louis from common carriers by motor vehicle. At St. Louis do you interline with one or many motor carriers?

A. We interline with one or more carriers operating from each manufacturing origin.

Q. For how long have you had these interline arrangements effective?

A. For varying periods of from seven to fifteen years.

Q. Does your company augment its equipment fleet by using the equipment of others?

A. Yes, we have always leased tractors from owner-operators. Of our present fleet of tractors we lease, on long

term, 16 tractors. On our Memphis operation, we frequently lease tractor-trailer units from other carriers. On our St. Louis operation, we frequently lease from our connecting line carrier, either its trailer or the entire tractor-trailer unit.

Q. Do you ever lease your equipment to other carriers?

A. Yes, at Memphis, we lease our tractor-trailer units to other carriers. At St. Louis we lease our trailer or our tractor-trailer unit to our connecting line carriers.

Q. What occasions your use of owner-operator leased tractors?

A. We have always had a few of such leased units and some of our owner-operators have been with us for as many as ten years. It gives us a basis for comparison of our costs against the rental fee. Further, we have found that these [fol. 2539] owner-operators, in their effort to cut their costs, have initiated practices which we have been able to follow, which in turn have resulted in savings in our costs and betterments in service. Just a matter of two heads being better than one. Then, an owner-operator is ordinarily a better business man than the run-of-the-mill driver —at any event, he has the enterprise to acquire the cost of his tractor and the desire to make more money than he could by simply driving. So we can thus attract a higher class of employees who would not be interested simply in a driving job. Then, an owner-operator should be more careful of his tractor and consequently takes better care of our trailer. Usually, the owner-driver is at the top in our safety contests and consequently makes the rest of our drivers do a better job.

Then, again, the rental earned by an owner-driver depends upon the amount of revenue we derive from the use of his equipment. Consequently, we feel that the owner-operator will always do the best possible job in the fastest possible time, and we then set a standard to be held up to the rest of our fleet. It has been our experience that a given trip is made in about 150 percent of the theoretical possible time, so you can see the leeway we have for improvement in our operation. By that I mean on a roundtrip from St. Louis to Dallas the mileage is 1,368. A driver beginning his work week should average 320 miles per ten hours' driving

period. Figuring his eight-hour rest period, such a unit [fol. 2540] might be returned to St. Louis in 70 hours. Ordinarily, it takes 100 hours for such a trip. For these reasons we believe owner-operators are a valuable addition to our operation and we would not like to lose them. Our owner-operators are on our seniority board and they and their equipment are handled in a way identical with the operation of company-owned equipment with employee drivers.

Owner-operators are necessary for other reasons: Flexibility of service being one. One example, in our operation at St. Louis, Mo., we have shipments moving from St. Louis to points in Missouri and Kansas where the shipment does not pass through another relay terminal and from the standpoint of drivers' hours and service to the public it is necessary to have a certain number of units stationed in St. Louis where we do not maintain shop and repair facilities. Therefore, we use owner-operators in cases of this kind and it works to great advantage to us in our operation.

We have other similar conditions from time to time, many times of a contrary nature, whereby we have to send a group of trucks to some place in our territory to handle a group of shipments and the owner-operator works to advantage in cases of this kind because he looks after the service and proper care of his equipment and takes more interest than the company driver would take of company-owned equipment.

Q. What occasions your use of tractor-trailer units [fol. 2541] leased from other carriers at Memphis and what occasions your lease of such units to other carriers at that point?

A. Our Memphis situation is somewhat similar to that in which manufacturing origin carriers sometimes find themselves when there is a sudden change in the flow of traffic from one area to another and one carrier finds itself out of business because of lack of traffic and another carrier finds itself with twice as much traffic as it anticipated.

While we maintain 25 percent more equipment than we feel the normal volume traffic justifies, we find ourselves in a similar position at Memphis when the barges bunch up

because of weather or breakdown, or where occasionally, on a particular sailing, the entire boat manifest of four or five hundred cars goes to our territory. In that event we lease the tractor-trailer unit of Commercial Carriers, who would then have no available traffic, or we lease from Dealers Transport Company. Commercial Carriers has an exbarge operation from Memphis to the Southern States and Dealers Transport Company the Ford assembly plant at Memphis.

Usually the lessor furnishes a driver who goes on our pay roll. In this event we have his medical report and we have and check his log. The equipment unit goes through our regular Memphis terminal inspection and we issue a travel order to the driver. Our sign is placed on the unit, it checks in at our terminals en route, our bills are given the driver, [fol. 2542] who after making delivery returns the signed delivery receipts, our sign, and the logs to us at Memphis. The operation of both the equipment and the furnished driver is identical to our own equipment and drivers.

The reverse is true where we lease our unit to Commercial Carriers, when the boat manifest contains traffic moving only to their territory. Obviously we cannot keep on hand twice as much equipment as we ordinarily need and only by this method of leasing can we give the kind of service which our shippers deserve and expect.

We could, of course, furnish a driver for the equipment we lease, rather than secure that equipment along with driver, by applying at the local union office as we cannot keep on our pay roll more drivers than are needed for our regular equipment. However, that practice is neither safe nor sensible as we would receive a driver unfamiliar with the equipment, one who perhaps has not been subjected to the intensive training program which we and Commercial Carriers give our drivers, and, in any event, a driver who doesn't have a steady job, and one who probably has had no experience in loading, unloading, and handling automobiles. The invariable result would be unsafe operation on the highway, abused equipment, delayed and damaged cargo, meaning an unsatisfactory operation for the public, the shipper, and the carriers. We have operated from Memphis in the manner described since the war and we can-

not conceive of that type of operation being considered [fol. 2543] undesirable or in violation of any reasonable regulation.

Q. What occasions your leasing of equipment at St. Louis?

A. The situation at St. Louis is entirely different. At that point we have two distinct separate types of leased equipment operations. One is sporadic and involves our leasing of the trailer of our interline carrier and in this event we put the leased trailer through our regular terminal inspection and then we simply attach our tractor, operated by our driver, to the interline carriers' trailer—and the unit then moves to destination through our various relay terminals in identically the same way our own trailer would have been operated. This operation occurs when the shipper, either the factory or dealer, desires that particular load to be handled without a transfer of lading from trailer to trailer en route.

We have a written lease to cover these instances when they occur and the rental is usually nominal where we switch trailers and otherwise on a mileage basis. Certainly that type of operation should not be considered undesirable.

Then we have an operation with Commercial Carriers, Inc., who operate in excess of 500 units, on certain traffic moving regularly from Detroit. This arrangement was first put in effect just prior to the war and has been in operation ever since. Its necessity arises from the fact that two large automobile manufacturers desire all of their motor carrier traffic to move from origin to destination without a transfer [fol. 2544] of lading en route, and Commercial Carriers, Inc., and ourselves, meet this requirement by a reciprocal equipment lease. In this operation Commercial Carriers originate this traffic at Detroit and bring it to our joint terminal at St. Louis, Mo., where we issue our receipt, and our responsibility for the cargo begins and continues to final delivery. This traffic always continues to destination on the trailer upon which it was originally loaded. After a terminal inspection of the equipment, we may attach our tractor to the trailer, use our regular driver, and operate the unit through our regular relay terminals to final destination, in the same way in which we would operate our com-

pany-owned trailer. In this event, we would deliver to the Commercial Carrier driver and tractor one of our trailers which would proceed on back to Detroit.

Or we may operate the Commercial Carriers' tractor-trailer unit, after inspection, on to destination, in identically the same way we would operate our own unit. In such operation we may use the Commercial Carriers' driver or our own regular driver on the leased equipment. In either event, the operation is carried on through our relay terminals in identically the same way our own equipment would be operated. In this type of operation we would furnish to Commercial at St. Louis a unit with or without a driver to take the place of the one leased, which they would then operate back to Detroit. A driver is furnished, [fol. 2545] or not, depending upon a number of factors, such as availability of our drivers, the situation with respect to the hours of service, the condition of the seniority board, etc.

Where equipment is furnished by either company with drivers, the driver becomes the employee of the lessee company and is put on that company's pay roll. In each instance the lessee has a medical report on that driver and receives that driver's log. We treat the furnished driver in the identical way we do our own drivers in every respect. In this operation the through revenue is divided upon an agreed division, which is the same irrespective of what method of handling is used. Where trailers only are leased, a nominal agreed trip rental is paid. Where the tractor is also leased, a percentage of the accrued earned revenue is paid. In this way we give the shipping public what it desires and we feel that we do so without violating any regulation, and we cannot see how this operation could be considered undesirable.

Q. In connection with the operation you have just described; did you also issue travel orders when a driver is furnished?

A. Yes, sir, we do.

Q. And the purpose of the travel order is to direct the driver in the operation of the equipment over your routes and give him certain information with respect to accident reports and highways to be used?

A. Yes.

[fol. 2546] Q. And it is issued by your terminal manager at the point the operation takes place?

A. Yes.

Q. On this operation do you ever use tractor equipment which is also leased to another carrier?

A. Yes, Commercial Carriers, Inc., also have some owner-operators. If Commercial's owner-operator's tractor pulls the load from Detroit to St. Louis, and we want to lease the tractor-trailer unit, we enter into a lease contract which is identical to that we have with our own owner-operators and then we operate that unit on to destination, using the owner, or not using the owner, in the same manner, and subject to the same conditions, I have heretofore described.

Q. Will you describe a typical trip under this arrangement you have described?

A. Yes. Let's consider a load moving from Detroit to Dallas. It moves on through billing and is loaded at Detroit on a Commercial Carriers' tractor-trailer unit. Each night at 6 o'clock we are advised by wire of the dispatch of Detroit traffic and its destination. We then dispatch our unit for arrival at St. Louis before the expected arrival of Commercial's truck at our joint terminal. The Commercial unit arrives at St. Louis and the load is checked for damages and a receipt is given by us. If we are to lease only the trailer we inspect it, accept or reject it, and if we accepted we attach our tractor to the trailer and after [fol. 2547] rebilling the load we dispatch the unit with our driver to our next relay terminal. At the same time we deliver our trailer to Commercial who inspect it, and, if accepted, they dispatch the unit to Detroit. If we are going to lease Commercial Carriers' entire unit, or the trailer, and their owner-operator's tractor, then we inspect the entire unit, and if acceptable we attach our sign, rebill the load, and dispatch the unit to our next relay terminal. If the Commercial driver or owner-operator is to drive the unit we check to see if we have the medical certificate and check his log to see if the trip to the next relay station can be lawfully made. In most of these cases we have an employment blank in our files for the Commercial driver, and if we do not we have one made out so that we can secure

his Social Security number and so that we can have the necessary information for our bonding company and our workmen compensation insurance carrier. This man is then on our pay roll. We issue our travel order covering the trip. Irrespective of who drives the unit, or what kind of a combination of units it is, it is dispatched to Joplin, Mo., where we maintain a relay terminal. This is a ten-hour drive and if the driver from St. Louis is to go on he must take an eight-hour rest period.

At this point the equipment is reinspected, the billing checked, and ordinarily, irrespective of whether it is our driver, our owner-operator, the former Commercial driver [fol. 2548] or their owner-operator, we immediately place a fresh driver upon the unit who would proceed to Dallas, thereby saving eight hours' time in transit. We would then return the unit to Joplin, where the St. Louis driver would pick it up unless in the meantime we had sent him to St. Louis with another piece of equipment. When the leased unit arrives at St. Louis it is offered to lessor who after inspection accepts it and the transaction is closed.

As far as I know and am advised, Commercial handles the equipment which they lease from us in the way I have described. The method I have described is the only way I know in which we can satisfy the requirements of the two manufacturers I mentioned.

Q. In view of the requirements of the two shippers mentioned, have you and Commercial applied for certificates which would permit each of you to perform single-line service from Detroit to Texas?

A. Well, as I stated, we have been handling this identical traffic since 1934. Until just prior to the war we transferred the lading from trailer to trailer at St. Louis. Trailer interchanges were difficult then because hardly two of them were alike and, besides, both Illinois and Texas had laws which required the use of trailers which were of an undesirable size or design. We were advised at the end of the war that these two shippers would require the handling of their [fol. 2549] traffic without transfer of lading. We were then faced with the necessity of inaugurating the plan I have just described or making applications for direct certificates. At that time all of the carriers had sold their trailer equip-

ment to the Government and it was easy, in the purchase of new equipment, for Commercial and ourselves to buy identical interchangeable equipment which made the plan feasible.

An operation from Detroit to parts of Texas may be as much as 1,800 miles. Any experienced operator knows it is easier to control shorter-distanced operations. With Commercial operating the north end and us operating the south end we both have a better and safer operation than either of us would have had operating the entire distance. Then, of course, under the Act, the Commission could not have granted us certificates unless the convenience and necessity required the issuance. If the present service we are rendering is an adequate and satisfactory one I don't know whether a certificate would issue or not.

Q. Mr. Cunningham, is your company a member of the National Automobile Transportation Association?

A. Yes, sir, it is.

Mr. Wrape: That is all.

Exam. Lawton: We will take a five-minute recess.

Gentlemen, please do not smoke in the anteroom to this hearing room. Use the lobby for that purpose.

(Short recess.)

[fol. 2550] Exam. Lawton: Come to order, please.

I notice two appearances that were not announced orally, Mr. Stedman and Mr. Curnett. Are they present?

Mr. Curnett: I made mine merely as a matter of record.

Mr. Wells: Mr. Stedman is out of the room at the present moment.

Exam. Lawton: Who do you appear for, Mr. Curnett?

Mr. Curnett: Arrow Transportation.

Mr. Dixon: As counsel for the National Automobile Transporters Association, I would like to adopt the testimony of Mr. Cunningham and ask a few questions which might be more in the nature of direct than cross-examination. I thought if I put it on at this time in advance of cross-examination it might be more orderly.

Exam. Lawton: Your questions will be in the nature of further developing the position of the N.A.T.A.?

Mr. Dixon: That is correct, sir.
Exam. Lawton: Proceed.

By Mr. Dixon:

Q. You stated that your company is a member of the National Automobile Transporters Association.

A. It is.

Q. Are you familiar with the fact that the general manager of that Association testified in this proceeding in St. Louis and testified to the effect that the National Automobile Transporters Association, as an association, en- [fol. 2551] dorsed the proposals of the American Trucking Association's truck leasing committee to the extent that those proposals were at variance with the Commission's proposals?

A. Yes.

Q. Is that the position of your company also?

A. It is.

Q. In connection with the interline, two-carrier service, through St. Louis, does your company ever effect delivery of automobile traffic to destination points which could be served in direct single-line service by the originating carrier with whom you interline traffic?

A. Yes, we do that regularly.

Q. Will you give us one or two examples of destination points you serve beyond St. Louis which could be served by the originating carrier in single-line service by the originating carrier who tenders the traffic to you in St. Louis?

A. Yes. To any point in Oklahoma, Commercial and other carriers, have authority to serve any point in Oklahoma but the bulk of the traffic is interlined with our company at St. Louis.

Q. Under those circumstances, do you utilize this interchange of equipment arrangement with those carriers at the St. Louis gateway?

A. Yes.

Q. Are you familiar with the fact that there is a proposal [fol. 2552] by the Commission to prohibit interchange of equipment between certificated common carriers where the

point of delivery is a common point of service in the certificate of the two connecting carriers?

A. Yes.

Q. Should that proposal become effective it would prohibit the type of service you have just described if there was an interchange of equipment at St. Louis?

A. Yes.

Q. To that extent is your company opposed to the Commission's proposal?

A. Definitely.

Q. And you seek to continue the type of service you have just described?

A. Yes.

Q. Will you give the reasons why you perform the service in that manner and which you wish to preserve?

A. One primary reason is because it is possible to perform a better and safer operation by confining your operation to shorter distances.

Q. From the standpoint of safety you feel that the performance of the two-carrier service with interchange of equipment at St. Louis produces even a safer service than would otherwise be effected?

A. Yes, it would. Hours of service is another very important factor.

[fol. 2583] Q. Can you think of any reason at all why that practice should be prohibited?

A. I cannot think of any reason why it should be prohibited.

Mr. Dixon: That is all I have.

Exam. Lawton: Does that complete the direct examination of the witness?

Mr. Wrape: Yes, sir.

Exam. Lawton: You may cross-examine.

Cross Examination

By Mr. Diehl:

Q. I take it your company has tariffs on file in accordance with the Commission's requirements?

A. Yes.

Q. Are your levels of rates generally in line with those of other carriers in the territory in which you operate?

A. Yes.

Q. You have insurance on file as required by the Interstate Commerce Commission?

A. Yes, sir.

Q. Do you know whether or not your insurance premium is higher by reason of the fact that you operate on this lease arrangement?

A. No, sir, it is not higher.

Q. Has your company ever been prosecuted for violation of the safety requirements of the Interstate Commerce Commission?

[fol. 2554] A. No, sir.

Mr. Diehl: That is all I have.

By Mr. Edward Wheeler:

Q. Do I understand you to testify that you do not have short-term leases with owner-operators?

A. No. Our leases are all long-term.

Q. The only short-term operations which you have are with other authorized carriers?

A. Yes.

Q. Do you oppose any of the rules contained in the notice of proposed rule-making issued in this proceeding other than the one with which you just testified which relates to interchange?

A. I don't know that I could answer that definitely. I am not entirely familiar with all of the rules proposed in that order.

Q. Have you read the order?

A. Yes, sir, I have.

Q. At the time that you read it did you see any provisions therein which would adversely affect your operation outside of this interchange?

A. I couldn't say. I saw a lot of things in there that would very definitely adversely affect our operation.

Q. What were they?

A. I just could not repeat them from memory.

Q. Could you identify them if I handed you a copy of the rules?

A. I might by taking a time to read the whole order.

Q. I ask you to check those rules quickly and tell me to which of those you——

[fol. 2555] A. There are several pages of this. It would take me 30 minutes to check those.

Q. How many times have you read those rules?

A. I read them once.

Q. That is all?

A. That is all.

Q. How many times did you read the rules proposed by the American Trucking Association?

A. I read them once.

Q. Are you more familiar with those than you are with these?

A. I wouldn't say so.

Q. Why did you adopt those rules in blanket form as being those which would not adversely affect your operation and to which you would have no objection?

A. Because I saw nothing in those rules which would adversely affect our operation.

Q. But you did in these rules?

A. Yes.

Q. But you don't have them in mind and don't think it is of sufficient importance to think about those and bring them to the Commission's attention in your testimony?

Mr. Wrape: Your Honor, counsel is arguing with the witness and we are not getting anywhere with that type of testimony. He stated he could not recall the rules.

[fol. 2556] Exam. Lawton: If he found any he thought would be disadvantageous in his operation it would seem that he ought to recall them to some extent.

Mr. Wrape: All the witness has done is to describe certain operations conducted by his company. Any rule that will affect adversely those operations he is against. That is his position.

Mr. Edward Wheeler: I submit that the witness read his testimony very quickly and I tried to follow it and I couldn't see where the rules would affect his operation adversely. In addition to that, he has endorsed the A.T.A. proposals

here and I want to find out why he adopted those and objects to the rules of the Commission, other than on this one point to which he testified which is in respect to interchange.

Exam. Lawton: Is it your position that nothing in the tentative rules, purely with respect to leasing as distinguished from interchange, affects your company?

The Witness: Mr. Examiner, it has been some time since I read the proposed rules. There are a number of things in there, as I recall, that would adversely affect our operation, and I would not be in a position to attempt to set out any particular instance without having an opportunity of re-reading the rules. That will take considerable time to do. They are rather lengthy.

Exam. Lawton: Does anyone else have any questions?

Mr. Edward Wheeler: I have further questions, Mr. Examiner.

[fol. 2557] By Mr. Edward Wheeler:

Q. I think I have a question pending, as a matter of fact.

Exam. Lawton: Read the pending question.

(Question read.)

The Witness: I answered that question.

Exam. Lawton: What is his answer?

The Reporter: I have no answer to the question.

The Witness: I think I said I did not know I was going to be asked that question and therefore I did not re-read the rules to refresh my memory.

By Mr. Edward Wheeler:

Q. Were these rules called to your attention by your counsel at the time you prepared your direct examination?

A. Only in a general way.

Q. When did you read these rules?

A. I can't give you the date.

Q. Why don't you use owner-operators entirely in your operations rather than owning any equipment yourself?

A. We have never followed the practice of using owner-operators exclusively. We have always had a certain number of owner-operators which we have found advantageous

to our operation. We never saw fit to go to them 100 percent.

Q. My question was: Why haven't you?

A. I have no answer to that question as to why haven't we.

Q. You stated that it is advantageous to use some. I am [fol. 2558] now asking you why it is not advantageous to you to use all owner-operators in your operation?

A. Not ever having used owner-operators 100 percent I would not be in a position to answer that question.

Q. What percentage of your operations are conducted through owner-operator units?

A. Oh, about 12 or 15 percent.

Q. Is it your policy to keep that percentage at that level, or increase it, or decrease it, or what?

A. We have no policy as to the percentage of leased operators, owner-operators, against company-owned equipment.

Q. Well, what determines whether or not you renew a long-term lease with an owner-operator?

A. Whether or not his services are satisfactory.

Q. I assume that from time to time owner-operators have come to you and tendered themselves for lease; is that correct?

A. Yes.

Q. What determines whether or not you hire them or lease their equipment and them under a lease arrangement?

A. A number of factors, whether we need additional drivers or owner-operators at that time. That is primarily the determining factor.

Q. Do you make more money by using owner-operators or by using your own equipment?

A. It is about a toss-up.

[fol. 2559] Q. You have stated in your direct testimony that owner-operators take better care of their equipment than your employed drivers. If that is the case I would presume that you would switch over from the use of their own employees.

A. The owner-operators do take better care of their equipment, because they have an investment in it.

Q. You are interested in maintaining the equipment of

your firm. I assume when your equipment is damaged it costs money.

A. That is right.

Q. Couldn't you save that money by eliminating all company-owned equipment and reverting entirely——

A. I just mentioned a little bit ago that the cost of an owner-operator as company equipment was practically the same.

Q. And that includes the damage to your own equipment?

A. That is right.

Q. On what is this statement of yours based, that owner-operators take better care of their equipment than your own employees?

A. Experience and common knowledge.

Q. Have you ever made any survey to determine that?

A. Yes.

Q. When did you make that survey?

A. Every day of the year.

Q. In other words, it grows out of your common experience and is not an actual survey you conducted, as such?

A. Not as such, no.

[fol. 2560] Q. Do these owner-operators use your facilities; that is, your shops, and so forth, for the maintenance of their equipment?

A. No, they do not.

Q. Do you know what shops they do use?

A. Yes, I know what shops they use.

Q. Are those shops better equipped than yours?

A. No, sir, they are not better equipped than ours.

Q. Is the equipment of the owner-operators better maintained than yours?

A. No, sir, it is not.

Q. Is it as well maintained?

A. We see to it that it is.

Q. So that from a safety standpoint your equipment is safe when it is put on the highways as those of your owner-operators?

A. Definitely.

Q. Would you say it is safer or not?

A. I would say there is no difference.

Q. Why is that? Do you inspect their equipment?

A. We certainly do.

Q. How often?

A. Every day.

Q. What control do you maintain over these owner-operators with respect to their logs?

A. Our control over the owner-operators with respect to their logs is exactly the same as any company driver; no difference.

[fol. 2561] Q. Is that true, generally, that you maintain the same degree of control over your owner-operators as you do over your own drivers?

A. Absolutely.

Q. Why don't you use owner-operators on a trip-lease basis?

A. I don't know any occasion for it in our operation at the present time.

Q. Why not?

A. I don't know why not. We have them leased on a long-term basis.

Q. In other words, you are able to meet the demands of your traffic, the traffic tendered to you, through the use of your own equipment or the use of owner-operated units leased to you on a long-term basis?

A. Yes, sir.

Q. Have you ever formed any policy with respect to the use of trip-lease equipment?

A. No, sir.

Q. In the trip leases that you enter into with other authorized carriers, am I to understand from your direct testimony that that is limited to carriers with whom you have a close day-to-day working relationship?

A. For the most part it is. We have entered into lease arrangements with carriers at times that we don't have as close a relationship with.

[fol. 2562] Q. Those with whom you do the vast bulk of your business, though, are carriers who have this close day-to-day relationship and with whom you exchange information with respect to the maintenance of equipment?

A. That is right.

Q. And I assume you have the same standard with re-

spect to that equipment and with respect to the caliber of drivers that you insist upon in your own operations?

A. Yes. We understand they handle their end of it just the same as we do.

Q. What is the distance from St. Louis to El Paso?

A. 1,394 miles.

Q. Is that the longest run you make out of St. Louis?

A. Well, that is—no, there could be longer runs.

Q. What is the longest run?

A. I don't have the mileage, but Phoenix, Ariz., could be a point out of St. Louis which is considerable farther.

Q. I don't believe I noticed how long you have been in this business, Mr. Cunningham?

A. Since 1929.

Q. And at no time during that period have you ever contemplated the use of trip leasing owner-operators?

A. No, sir.

Q. And that has been because you and the other carriers with whom you have this relationship have been able to [fol. 2563] satisfy all the demands of shippers tendering automobiles and trucks to you for carriage to a given point?

A. Yes.

Mr. Edward Wheeler: I have no further questions.

By Mr. Lordan:

Q. Mr. Cunningham, on page 4 of your prepared statement, at the bottom of the page, your answer in the long paragraph—your explanation, as I take it extending on over onto page 5, is as to the advantages to your concern relative to the use of owner-operators. Is that a fair statement that that is a part of it?

A. Yes.

Q. You have actually an operation which consists of the second part of a movement from the automobile centers up north, do you not?

A. Yes.

Q. Some carriers, the main ones being Commercial Carriers or Dealers Transport, who transport the automobiles from Flint, Mich., and South Bend, Ind., down to St. Louis generally——

A. Yes.

Q. ——and you transport them from St. Louis or other points in the Middle West to ultimate points of destination in the southwestern States; is that right?

A. That is right.

Q. You transport that second half of the movement on equipment, tractors and trailers owned by your company [fol. 2564] and driven by your company employees?

A. Yes, sir.

Q. And, No. 2, you conduct some of that operation by virtue of owner-operators on a long-term lease?

A. Yes, sir.

Q. Now, you likewise at points of interconnection take some of the equipment of your connecting carriers, your originating carriers?

A. That is right.

Q. And in some instances you take his equipment that is owned and operated by the certificated carrier who transports it, for the purpose of illustration, from Detroit to St. Louis?

A. Yes.

Q. And take his equipment beyond?

A. Yes.

Q. And in some instances at this point of connection you take the owner-operator who is under lease to him and enter into a similar arrangement for beyond over the lines certificated to you?

A. Yes.

Q. What is your experience with relation to the owner-operator who is under lease to your connecting lines?

A. It has been good.

Q. The owner-operator who is under lease to you, his operation is identical with that of your own employees?

[fol. 2565] A. Yes, sir.

Q. He is on your pay roll?

A. That is right.

Q. And his logs are subject to your supervision and control?

A. Yes, sir, they are.

Q. Is the same situation true with respect to the owner-operator who is under lease to the originating carrier?

A. Yes, sir.

Q. In whose possession are his logs being kept, in his possession, in your possession, or that of the owner-operator?

A. I didn't get that question.

Exam. Lawton: Will you read the question?

(Question read.)

The Witness: The logs are kept in the lessee's possession, whatever the case may be.

By Mr. Lordan:

Q. They would be in the possession of the connecting carrier from Detroit to St. Louis, for example?

A. The logs would be kept in the possession of whoever the owner-operator was working for.

Q. When a load of automobiles was transported from Detroit to St. Louis by the facilities of an owner-operator who is under lease to the Detroit-St. Louis carrier, and then arrangements are made between your company and that owner-operator for delivery beyond, do you put that owner-operator on your pay roll?

[fol. 2566] A. Yes, sir, we do.

Q. In each instance?

A. In every instance.

Q. You put the owner-operator on your pay roll in every instance?

A. Yes.

Q. Some of the runs beyond St. Louis are for a considerable distance, are they not?

A. They are, indeed.

Q. You stated on page 5 of your prepared text that the round-trip from St. Louis to Dallas is 1,368 miles.

A. Yes, sir.

Q. That owner-operator does not in many instances go completely through on that roundtrip?

A. No, sir, he does not.

Q. He takes it to the next junction point beyond St. Louis?

A. To the next relay station.

Q. In other words, a 10 hours' drive?

A. Yes.

Q. And then it is turned over to one of the drivers?

A. We put a relief driver on it.

Q. And the equipment goes to Dallas?

A. Yes.

Q. What happens to the owner-operator who is taken off the equipment in accordance with the Interstate Com- [fol. 2567] merce Commission's safety rules at the relay station?

A. He stays there and waits for his unit to come back, or if he has available hours we might use him on another trip to St. Louis and turnaround to Joplin, Mo.

Q. If he waited for the equipment at this relay station he would not be earning anything as a driver when he was at the relay station?

A. Not as a driver.

Q. His equipment, however, would be earning money on the way to Dallas and back to St. Louis?

A. That is correct.

Q. But he would not be operating the equipment?

A. Not if we placed a relief driver on it.

Q. Therefore, there would be no difference in the manner of operating that owner-operator's equipment than in operating your own?

A. Not a bit in the world.

Q. And the owner-operator would not be in control of the equipment *belong* the relay station?

A. No.

Q. And he would not be responsible for its maintenance, but your driver would?

A. If something would happen the owner or driver would be responsible for maintenance and would call his terminal for instructions.

[fol. 2568] Q. On a supposed trip, and assume it for the purpose of my question, from Detroit to Dallas by an owner-operator, how much of the time under the operation as you conduct it would he be operating his own equipment and how much of the time or mileage would some other employee of the carrier, or your company, be operating his equipment?

A. For the most part the originating driver would operate to Joplin, Mo.

Q. From Detroit?
A. From Detroit.
Q. How far is that?
A. In round figures, about 800 miles.
Q. How long would that take him?
Put it this way: How many driving shifts of ten hours would that take?
A. Three driving shifts.
Q. And two rest periods?
A. And two rest periods.
Q. And then he would arrive in Joplin, Mo.?
A. Yes.
Q. At the end of a 10-hour period?
A. At the end of a 10-hour period?
Q. At the end of the third 10-hour driving period?
A. Approximately so, yes
Q. And then he would have to wait 10 hours, approxi-
[fol. 2569] mately, before he could go on the run assigned to him by you?
A. If he took the load on he would have to take an eight-hour rest period at Joplin.
Q. If it were the desire of the shipper to expedite the cargo would you hold the cargo 10 hours at Joplin and then send it on?
A. It is the desire of the shipper to expedite the shipments, and that is why we use relay drivers and relay terminals, as well as compliance with safety regulations.
Q. As a matter of actual practice, do you have the cargo wait while the owner-operator or your own driver sleeps, or do you have it go on?
A. We have it go on ordinarily.
Q. Then the owner-operator does not go through with his own equipment under certain circumstances, does he?
A. No, not for the most part. He does not have enough hours to do that.
Q. On a trip as you have recorded in the last page of your statement of 1800 miles, that owner-operator pieces of equipment might be driven by four or five men to get from point of origin to point of ultimate destination.
[fol. 2570] A. It would not be that many men but the original owner-operator would be relieved of his unit at

Joplin because he definitely would not have enough hours to go that far and return without laying over somewhere to catch up hours and tying up the equipment. That driver is utilized on other company-owned equipment between St. Louis and Joplin, Mo., during that period.

Q. And between the time he got from Detroit to Joplin, Mo., you had to drive three driving shifts and have two rest periods?

A. Yes.

Q. And if you decided not to hold the cargo while he rested 16 hours in between those three driving shifts, perhaps his truck and driver had gone on?

A. I didn't quite understand the question?

Exam. Lawton: Read the question:

Mr. Lordan: I will withdraw it.

By Mr. Lordan:

Q. To get to Joplin, Mo., from Detroit, if I understand you correctly, it would require three driving periods and two rest periods.

A. That is right.

Q. A man would drive from Detroit for 10 hours and then rest eight hours?

A. That is right.

Q. And then drive 10 hours more?

A. Yes.

[fol. 2571] Q. And rest eight hours?

A. Yes.

Q. And drive 10 hours more?

A. Yes.

Q. And then he is in Joplin, Mo.?

A. That is correct.

Q. If it were to the advantage of either of the carriers involved, or the shipper or consignee not to have that cargo wait while the driver slept, that is, for these two eight-hour periods, that particular tractor and trailer would have gone on while he slept, wouldn't it?

A. No, it would not have gone on. We don't have relay stations between Detroit and——

Q. Joplin?

A. ——and St. Louis. We can relay at St. Louis.

Q. What particular advantage is there gained in the efficiency and economy of the operation of the owner-operators' equipment when operated under the circumstances that you relate? How can he operate that type of equipment under those circumstances more economically or more efficiently than your own driver?

A. Because he is on the equipment the major portion of the time that the equipment is rolling.

Q. The major portion?

A. Yes.

Q. Even though under some circumstances that would re-
[fol. 2572] quire the cargo to wait while he rests?

A. I didn't say that at all. The distance is 800 miles, or approximately so, from Detroit to Joplin, Mo. While some shipments from Joplin are a considerable mileage, others are closer mileage and it does not take the equipment so long to turn around from destination back to Joplin. There is not so much time consumed as from Detroit to Joplin and return to Detroit.

Q. It would take him the same amount of time to take his equipment back to Detroit empty?

A. Not quite as much.

Q. Approximately?

A. You can make considerably better time empty than you can loaded.

Q. If I understand you correctly, you did not observe any difference in the cost of maintaining equipment when maintained by an owner-operator than when maintained by your company?

A. There is scarcely any difference. We keep a constant check on that and if the time should ever come that the owner-operators would be decidedly cheaper than the over-all company operation we would have more company operators for sure.

Q. There isn't any reason to believe he could buy gasoline, tires, oil, or anything like that, cheaper than *you* company could?

A. No.

Q. And he could not operate physically a piece of equip-
[fol. 2573] ment per mile, any cheaper than you could?

A. Possibly by virtue of the fact that he naturally is

going to take a little better care of that piece of equipment, because he has his own money invested in it, than the ordinary company driver will take of company-owned equipment.

Q. Sometimes the company driver will be operating his equipment?

A. That is true. He cannot be on the equipment all the time. No driver could.

Q. To that extent his advantage is lost?

A. To that extent.

Q. One question I wanted to know about in connection with your seniority board. What do you mean by your seniority board, Mr. Cunningham?

A. The length of time the employee has been in our service.

Q. Is the element of employment or work or transportation governed by the position of (1) the owner-operator or (2) employee on your board?

A. There is no difference.

Q. Does the position of both of them on the seniority board have anything to do with the amount of work they are given?

A. No, sir.

Q. Does it have anything to do with the order in which he would lay off work?

A. Yes, definitely.

Q. Will you explain that more fully, please?

[fol. 2574] A. If we were in a business lull and it was necessary to lay off drivers they would be laid off from the bottom of the seniority list, the youngest man laid off first.

Q. Would that make any difference as to whether or not it was an owner-operator or a company driver?

A. No difference whatever.

Q. At the time of a business recession temporary in nature, is it the policy of your company to dispose of owner-operators first?

A. No, sir.

Q. Do you keep them on a parity with your own employees?

A. They take their turn exactly in accordance with our own employees.

Q. And do they take their turn in accordance with their position on the seniority board?

A. Yes.

Q. The oldest man in accordance with seniority of the company, either owner-operators or employees, gets the first choice of trips?

A. No, sir.

Q. What determines that?

A. Their order on a trip basis.

Q. First-in, first-out?

A. Yes, sir.

Mr. Lordan: Thank you, Mr. Cunningham.

[fol. 2575] By Mr. Todd:

Q. Mr. Cunningham, you were testifying on cross-examination in connection with the arrangements your company makes between a connecting carrier and yourself on a trip lease basis, particularly when the connecting carrier's equipment is an owner-operator's piece of equipment. Do you remember that testimony?

A. Yes, I believe I do.

Q. Can you tell me, Mr. Cunningham, when you make arrangements to use a piece of equipment of that type going on a through movement, do you make it with the owner-operator or do you make it with the originating carrier who brings a load into your company?

A. You mean with the originating carrier's owner-operator?

Q. Yes, sir.

A. We make that with the owner-operator direct.

Q. You don't make the arrangements to use it to go beyond with——

A. The general arrangement is understood between your company and Commercial Carriers, for example, but when that owner-operator driver arrives from St. Louis, Mo., if we have no lease agreement with him the lease agreement is entered into direct with the owner-operator and our company.

Q. But you have a general understanding, I take it, with Commercial Carriers with respect to use of their owner-operators to points beyond?

A. Yes, sir.

[fol. 2576] Q. I believe in your direct testimony you stated that approximately 90 percent of your traffic was handled on the interchange arrangement that you testified to; is that correct?

A. Yes, the so-called secondary or subsequent movements.

Q. So I take it you have about 10 percent local traffic; is that correct?

A. Initial movements, yes, somewhere in that neighborhood.

Q. Does that traffic originate out of St. Louis or Memphis, or both points?

A. There is a good portion of that originating in Springfield, Ohio, and South Bend, Ind.

Q. Does any of it originate at either St. Louis or Memphis?

A. Some occasionally at St. Louis; no initial movement or traffic at Memphis.

Q. This question I want to go particularly to that traffic that originates locally in St. Louis: Is there any difference in the service that you perform and the shipper receives from your company, where you originating traffic locally in St. Louis and make delivery at some point in the Southwest, and the service you perform on this interchange arrangement, with the exception that on the interchange you get the traffic from some other carrier whereas on the other you pick it up at point of assembly? Is there any difference in the service that the shipper receives or that you perform?

A. I would say no difference.

[fol. 2577] Q. Do you have any traffic moving eastbound out of St. Louis at all?

A. Eastbound?

Q. Yes.

A. No, sir.

Q. Do you have in any of your operations any occasions to trip-lease your equipment to other carriers for the purpose of providing a return load for that equipment?

A. We have not had that occasion, no.

Q. I believe you stated that at times you have used car-

riers other than Commercial and Dealers Transport when you have a peak period in your business. Is that a correct statement of your testimony?

A. No, sir; I don't believe that is correct. We have used Commercial carriers and Dealers Transport in that connection.

Q. You have never had any occasion to obtain equipment from any other carrier during any of your peak seasons at any point?

A. Yes, we have, over a period of years.

Q. Did you ever have any occasion to obtain any additional equipment at St. Louis from any other carriers other than the two mentioned in your direct testimony?

A. Yes.

Q. What other carriers?

A. From Associated Transporters.

Q. From any other carrier in St. Louis?

[fol. 2578] A. I believe not.

Q. Have you ever used during those periods the equipment of Complete Auto Transit, Inc.?

A. No.

By Mr. Pou:

Q. I would like to ask a little further in connection with the matter Mr. Todd inquired about at the time of the beginning of his cross-examination. In instances where owner-operators' equipment is used from points in Michigan to St. Louis and beyond St. Louis, and interchanged with you at St. Louis, I believe you stated that upon arrival of such a shipment at St. Louis, and its interchange with you, that you then made an arrangement with the owner-operator, if you didn't already have one, for the use of his equipment and the use of his services to the destination point of the shipper. Is that correct?

A. That is correct, sir.

Q. What kind of a lease arrangement do you make with him?

A. Exactly the same lease arrangement we have with any of our owner-operators.

Q. And that is the lease arrangement that you call a long-term lease?

A. Yes, sir.

Q. Do you know what kind of lease arrangement Commercial or the other initial carriers have with these same owner-operators? Is that also a long-term lease arrangement?

[fol. 2579] A. Yes, sir; it is exactly the reverse of what I described for our operation.

Q. And I believe you stated you make that arrangement not with the original carrier but with the owner-operator himself.

A. The lease?

Q. Yes.

A. The lease is made with the owner-operator himself.

Q. Is it your understanding that a long-term lease can be in effect for one piece of effect and in effect with two carriers at the same time?

A. Yes. sir.

Q. That is what you do, isn't it?

A. Yes.

Q. You don't see anything inconsistent with the fact that two carriers at the same time hold a long-term lease on one piece of equipment?

A. No, I don't.

Q. Evidently the lease is not for your continuous use of the equipment, or the other carriers' continuous use of the equipment; is that right?

A. It is for the continuous use of the through service performance.

Q. And during periods when neither you nor the other carrier is using that equipment is the owner-operator free to lease it to someone else, or lease it in some other service?

[fol. 2580] A. I would say no.

Q. Only in the service of the initial carrier and your company; is that right?

A. That is right.

Q. Does that mean that you and the other carriers make rather constant use of that owner-operator and his piece of equipment?

A. Yes, sir. In other words, in our own operation we control our owner-operators in the same identical manner that we control any other driver, and we would not permit

that owner-operator to enter into a lease agreement with someone else other than, for example, Commercial Carriers, without our consent.

Q. By the word or term "lease," you don't necessarily mean that the lessee obtains the exclusive use of the property which is leased, do you?

A. It is exclusive use while he is in their employ.

Q. But that is not a full time employment and, therefore, it is not a full time lease; is that right?

A. I don't know if I exactly understand just what you mean.

Q. As a matter of fact, isn't the effect of it that you merely lease this equipment from St. Louis to the destination point in the Southwest?

A. No, not necessarily. We expect that equipment to make another trip.

Q. But you don't know when?

[fol. 2581] A. We have a pretty good idea.

Q. Isn't the effect just about the same as if you had made a trip lease for that equipment?

A. I don't think so.

Q. Tell us where it differs.

A. As I understand a trip lease, you have to make a lease on each and every trip the vehicle made.

Q. Don't you make the lease when the vehicle arrives at St. Louis, unless you already have a general understanding about it?

A. If we don't already have a lease on the piece of equipment we make a new lease.

Q. That covers all future periods within the period covered by the lease?

A. Yes.

Q. How long does your lease contract run generally?

A. One year with an automatic renewal unless——

Q. Objected to by one party?

A. ——unless objected to by one party, or the other.

Exam. Lawton: I want to ask about the cancellation.

Mr. Pou: Go ahead.

Exam. Lawton: How much notice do you give for cancellation of the lease?

The Witness: Thirty days' notice by either party.

By Mr. Pou:

Q. How does your company compensate the owner-[fol. 2582] operators for the use of their services and their equipment?

A. On a percentage of the gross revenue.

Mr. Wrape: He said "equipment and services."

The Witness: The equipment is on a certain percentage of the gross revenue.

By Mr. Pou:

Q. What does that percentage run, please, sir?

A. And the driver's wages are paid separately and direct to the driver on the same basis any other driver would be paid.

Q. And you have already testified that the driver of the owner-operated equipment is placed on your payroll and treated exactly the same as your other drivers.

A. Identically.

Q. I am not sure we cleared up the percentage basis for the use of the equipment. Would you have any objection to giving us the percentages you pay?

A. It is the customary uniform percentage. I would not care to give that percentage unless the Examiner directs me to.

Q. I don't want to ask anything that you yourself prefer not to state in that connection.

You say it is the percentage uniformly paid in the industry?

A. Yes.

Q. And it is a percentage on the revenue of the particular shipment being moved at the time?

A. Yes.

Q. And it has nothing to do with the number of hours?

[fol. 2583] Exam. Lawton: What would be the objection to compensating for the use of the equipment on a mileage basis or time basis, or something other than a revenue basis?

The Witness: That is hard to answer. We have tried numerous methods and the only method we have found

that was equitable to all concerned was a percentage of the gross revenue basis.

By Mr. Pou:

Q. In those instances when the shipment moves to St. Louis on owner-operated equipment, and you make further arrangements for further use of his equipment with the owner-operator, and perhaps for the use of his services, when does that lease end as far as you are concerned?

A. One year from the day it is made.

Q. Insofar as the use of that equipment on that particular trip, does your operation of the equipment cease when the shipment is delivered at destination, or do you treat the operation as still yours until the equipment gets back to St. Louis?

A. Until the equipment gets back to St. Louis and is turned back to Commercial Carriers.

Q. So you realize if any accident happens on the highway the operation is yours?

A. It definitely is and on the travel order we issue to the owner-operator driver—it is stated on the travel order that in case of accident notify so and so.

Q. And that covers the return empty movement as well as the loaded movement, does it not?

[fol. 2584] A. Yes.

Mr. Pou: That is all.

By Mr. Lieberman:

Q. You testified in response to some questions on cross-examination that you believe in conducting the operations of your company that the cost to you of operating your own equipment as compared to the cost of operating leased equipment was the same, with very little difference.

A. Yes, sir; I did.

Q. You also answered certain questions about the cost of operating leased equipment. When you stated you believe there was very little difference in cost were you referring to the cost to your company of operating leased equipment or the cost of operation by the owner of that piece of equipment?

A. I was referring to the cost to us.

Q. You have no knowledge of the cost of operation of the owner-operator; isn't that a fact?

A. No, I don't know what it costs him. That is up to how good a job he does in taking care of his equipment and managing it.

Q. We are to understand your answers to be in the light of that explanation?

A. Yes.

By Mr. Libby:

Q. Mr. Cunningham, will you tell us this: When these trucks operated by your company, either owner-owned or other carrier-owned—what do you have on that truck to show the public, for instance, that it is your truck?

[fol. 2585] A. If we are operating, for example, a tractor-trailer unit of Commercial Carriers, Inc., we have door signs with our name and our certificate number, that are put on the doors of Commercial Carriers' trucks that completely cover up their name and displays our name.

Q. So in the event of accident the public knows who to look to?

A. Yes.

By Mr. George:

Q. Just a couple of points, Mr. Cunningham. That is with reference to the so-called drivers of their own units, or owner-operators, I believe you stated they looked after their own equipment.

A. Yes.

Q. When is it done?

A. Continually.

Q. Is it done while the vehicle is operating over the highway, while they are driving it?

A. If *someone* goes wrong when they are operating over the highway they have it fixed on the road. Generally speaking the ordinary maintenance and service is done wherever they are stationed. They have regular shops that they patronize and have their service work done regularly.

Q. Are some of those men mechanics and will they do their own work?

A. In some cases the leased operator is a mechanic and does his own work.

[fol. 2586] Q. Would your drivers do that?

A. No, sir.

Q. Why?

A. They are paid for driving, not for mechanic's work.

Q. Is there a contract or anything with your labor organization that prohibits them from doing that?

A. It doesn't prohibit them, no.

Q. That is their own discretion as to whether they want to do it, or not, and most of them won't?

A. It is their own discretion but, generally speaking, a driver is not going to do any major mechanical work unless he is paid for it; and, in the second place, the driver does not have the necessary tools and equipment for properly doing the work. They might make a minor repair or a minor adjustment, yes, when no specific tools were required, but as far as anything major is concerned they are not going to do it.

Q. When the owner-operator does it whose time is it done on, your time or his time?

A. On his own time.

Q. Does that time appear on his driver's log?

A. If he is on duty he does.

Q. If he is on duty you would be paying him, wouldn't you?

A. We would be paying him for the trip, his mileage and base basis.

Exam. Lawton: Can't we get through with this witness? [fol. 2587] I promised a man who has to leave at noon that he could be heard before the recess.

Mr. Ellis: May I have a couple of questions now since something has been brought in, please?

Exam. Lawton: Proceed.

By Mr. Ellis:

Q. Mr. Witness, I am asking you simply because of questions asked by Mr. George, first, about this point of seniority. Does your company contract with any labor organization as a collective bargaining agency for your drivers?

A. Yes, sir; we do.

Q. Does that include both wages and working conditions?

A. It does.

Q. Does that cover men when they are driving for you, regardless of whether they be operating their own units or in the role of a company driver?

A. There is no difference.

Q. An owner-operator is as fully protected by this labor union contract as if he were a regular employee of yours?

A. Exactly.

By Mr. Nisbet:

Q. Does your company on occasion lease any of its equipment to shippers or private carriers?

A. No, sir; we do not.

Exam. Lawton: If there are no further questions you are excused.

(Witness excused.)

[fol. 2588] Robert W. Wilson was sworn and testified as follows:

Direct examination

By Mr. Burstein:

Q. Will you state your name and address for the record?

A. Robert W. Wilson, 5 Roxbury Road, Rockville Centre, Long Island.

Q. With what companies and organizations are you affiliated?

A. President of American Van Lines, Inc., of New York City; president of Independent Movers and Warehousemen's Association, Inc., of Washington, D. C., and executive vice-president of Atlas Van Lines of Chicago, Ill.

Q. What is the business of American Van Lines, Inc.?

A. Trucking of householding goods and storage, interstate and local.

Q. That company, I take it, has a certificate of public convenience and necessity authorizing the transportation of household goods in interstate and foreign commerce?

A. It has.

Q. Is the business of the Atlas Van Lines substantially the same?

A. Yes.

Q. You have been and still are president of American Van Lines?

A. Yes.

Q. How long have you held that position?

[fol. 2589] A. That and its predecessor for about 15 years.

Q. Would you describe very briefly the nature of the organization and functions of the Independent Movers and Warehousemen's Association?

A. It is a national carrier and warehouse association principally related with traffic problems and other related subjects. We frequently go beyond that into general operating problems as a trade organization.

Q. That association is an affiliation of household goods carriers?

A. It is.

Q. And one of its functions is to publish tariffs, rates, and charges for household goods carriers?

A. That is right.

Q. Do you play any part in the construction of such tariffs?

A. Yes, an active part.

Q. How long have you been president of that association?

A. Since 1935, the year it was founded. I have been president for about 10 years.

Q. As part of your duties as president of Independent Movers & Warehousemen's Association, president of American Van Lines, Inc., and executive vice-president of Atlas Van Lines, have you had occasion to consult with other movers to investigate and make surveys of problems in the moving industry?

A. Yes, I have spent a great deal of time on that.

[fol. 2590] Q. Will you distinguish very briefly between household goods transportation and the transportation of general commodities?

A. The first distinction would be that I know very little about any transportation other than household goods. Household goods, of course, is a purely call and demand

service as distinct from freight operations. We haul principally one commodity rather than a varied selection of commodities. Those are the two principal distinctions.

Q. When you characterize the business as call and demand, are we correct in assuming that there is no regular or fixed group of shippers regularly calling upon the business for service, and the business is sporadic, catch-as-catch can?

Mr. Edward Wheeler: I suggest the witness be asked quesions so he can testify.

Exam. Lawton: Please don't lead him.

By Mr. Burstein:

Q. To what extent is leasing employed in the field of household goods transportation?

Mr. Lieberman: I object unless this is confined. Is he speaking on the part of the industry or the carriers he is representing?

Mr. Burstein: I submit this man is an expert, not only in his trade and profession, but in the field, and we have produced this witness in aid of the Commission's investigation. It seems to us the Commission ought to have the benefit of expertness in the field, and this man is certainly com- [fol. 2591] petent to adduce the kind of evidence we are seeking to elicit by our questions.

Exam. Lawton: Are you familiar with leasing practices in the household goods industry?

The Witness: Yes, sir.

Exam. Lawton: How have you acquired that knowledge?

The Witness: By practical operation.

Exam. Lawton: Your knowledge is principally with respect to carriers whom you represent, is it not?

The Witness: Yes, I would say so.

Mr. Burstein: I think my last question is to what extent is leasing resorted to in the field of household goods transportation. That is, based upon his experience with carriers represented by him in the Association and other carriers he has had occasion to meet. The witness has been amply qualified, Mr. Examiner.

The Witness: Leasing is increasing daiiy in our business

to the point where there is scarcely any operation at all, to my knowledge, that does not employ it to a large extent. It is a vital part of our business.

By Mr. Burstein:

Q. Would you be in a position to state what percentage of household goods transportation is conducted by leased equipment?

Mr. Lieberman: I object to that.

Mr. Burstein: The question calls for a "yes" or "no" [fol. 2592] answer, and then you can object.

Mr. Lieberman: May we have the question read back, please?

(Question read.)

Mr. Lieberman: I object on the ground he is not qualified to speak on behalf of the household goods industry.

Mr. Burstein: It is one of the fundamental rules of evidence a man is deemed to be an expert in his own trade or vocation, and this man has had broad experience in the field, attended meetings and conventions and made surveys and investigations. This is not in the nature of an adversary proceeding. We are trying to develop facts for the Commission and any facts this man might reasonably present ought to be accepted. Certainly it would be up to the Examiner at a subsequent time to weigh the evidence.

Exam. Lawton: If he goes beyond his own field he is opening up a big field of cross-examination. He may be here all afternoon.

Mr. Burstein: I don't think we will.

The Witness: As an opinion, I would say in one form or other fully 75 percent of the business is handled under some form of lease arrangement.

By Mr. Burstein:

Q. Based on your experience with carriers of the Association whom you presently represent, what types of transportation are resorted to in the household goods transportation field?

[fol. 2593] A. Basically, we have two general purposes. One is the lease covering a driver-owned piece of equip-

ment regularly employed in lieu of equipment operated on a salary basis. The other objective, of course, is the use of carrier-owned equipment or leased equipment by another carrier.

There are two distinct phases, as I see it, in our particular type of transportation. With the first phase, I think it will be amply covered by the rules and regulations, and many other witnesses will go into it thoroughly.

With respect to the second phase, my objective in being here is to comment on that.

Q. Are you referring to the interchange arrangement between and among carriers, Mr. Wilson?

A. Yes. All the interchange movements and diversion of business and equipment interchange.

Q. Do I understand you to say interchange is effected by means of interchange in the household goods field, as far as you know?

A. Yes.

Q. To what do you attribute the use of leasing to which you have just described?

A. Leases are entered into by household goods carriers to accomplish several purposes. One is in respect to diversion of traffic between carriers. They live under constant threat that they are performing some form of unauthorized brokerage, and they tried to overcome that by means of some [fol. 2594] leasing arrangement. The more imperative reason is the fact that so many carriers have a very narrow pin-point radial operation and in order to overcome these restrictive certificates they enter into leasing as a desperate effort to legitimatize what is otherwise unlawful operation.

Q. Will you illustrate a radial operation in which the radial base authority on outgoing or incoming freight is pinpoint?

A. By pinpoint I mean that business must be destined to originate at certain points. That is not as important on outbound as on inbound traffic. Outbound carriers ordinarily handle their own self-booked shipments. However, on the inbound trips which are perhaps the most important angle of their transportation, they are required to limit to the pinpoint from which they originate.

Q. Under a radial certificate a carrier might be author-

ized to transport household goods from, say, New York City, N. Y., to points and places in a dozen States but obliged to transport on the return to one destination point?

A. Yes.

Q. Are you stating that as a consequence of such limitation he is obliged to resort to leasing so he might handle goods destined to points other than New York City?

Mr. Edward Wheeler: Mr. Examiner, this witness is really being led.

By Mr. Burstein:

Q. Are you familiar with the proposed rules and regu-[fol. 2595] tions respecting leasing, Mr. Wilson?

A. Reasonably familiar.

Q. Based upon your understanding of those rules, are you able to state whether or not those rules are calculated to or will accomplish a correction of the situation you have just described?

A. In my opinion, the rules are very good as far as they go, but, unfortunately, we simply touch the high spots. We have several desperate diseases in the household goods field, and the application of a little salve on the diseases will perhaps cancel them but they will break out unless the cause is found. You must go beyond the purpose of the lease to find that out.

Q. Have there been any abuses as a consequence of the use of such leases as you have described?

A. It is inevitable that permissive form of the leases leads to the abuses of the lease. I don't speak for all carriers, of course, but in the opinion of many carriers regulation has become almost a joke to a certain extent and we have frustrated the purpose of regulation.

Q. Could you be a little more specific about abuses than you have? Could you illustrate an example where the abuse of a lease might lead to evasion, as you understand it?

A. At the present time my own company is limited in our own operating authority to some 30 States. However, by payment of a very nominal fee to a carrier more for-[fol. 2596] tunately situated we can operate the equipment to any point in the United States. Whether or not we handle our own goods or that carrier's goods, or two or

three carriers' goods, seems to be immaterial. There is nothing to prohibit us from engaging in what we believe are illegal operations on the basis of spot or trip leases.

Q. You stated that while the rules were in part undesirable, that they were mere surface solutions and something more fundamental needed to be dealt with.

A. In my opinion the practice of trip leases—and I say that is a fictitious device in many instances which should be eliminated to remove the extension of hauling operations beyond the carrier's certificated authority.

With respect to bona fide leases of equipment on a trip or permanent basis, we believe that those should be authorized for the purpose of augmenting equipment but should be restricted to operations within the territory within which both lessor and lessee are certificated. Our thought behind that is that permission to operate beyond the territory in which both lessor and lessee are certificated gives rise to the tremendous abuses which are presently observed in the fiction of trip leases.

However, there is a distinct trend under federal regulation in our form of household goods field, towards national system operation. By that I mean, whether we like it or not, or whether it was the original intention of Congress—that I couldn't say—but the fact is that the trend is dis- [fol. 2597] tinctly towards system operation and if that is a good thing its benefits accrue to both shipper and carrier alike, I feel it should be recognized and practical consideration given to how it may be fostered and developed.

That type of operation will require some form of permanent lease, perhaps intermittent operation for the purpose of integrating the component points of that national system, and I believe each of those should be filed individually and subjected to scrutiny of the Interstate Commerce Commission before being permitted to operate.

Q. Will you describe a little more fully the use of the term "intermittent operation"?

A. We all realize, of course, that there are peak periods and dull periods in our field, and no carrier, large or small, could be expected to maintain equipment to take care of the peak periods. Hence, they must resort to leasing equipment of different members of the organizations.

There must be some form of lease which is practical, not one which requires carriers to spend half their time thinking about ways of getting around it, but some practical form of lease which would permit the carrier to use his equipment completely for his own use but not necessarily for the use of the system of which he is a part.

Q. Early in your testimony you adverted to the interchange arrangements as a species of leasing. I wonder if [fol. 2598] you could tell the Examiner and these gentlemen here how the leasing program might be integrated with the interchange and interchange practices in the field.

A. I realize not every carrier is so fortunate as to book his own business to the point where he is able to dispatch full loads of goods. He must cooperate with other carriers, particularly on return loads. That means when he gets to another city he accepts a shipment from a carrier who presumably booked it for himself but finds it more advantageous to have the other fellow handle it.

We have never been able to find out for certain whether each of us is living under a constant threat of unauthorized brokerage.

Q. Based on your experience in the field, how would leasing be properly integrated with the interchange practices which are so necessary in this field?

A. If the national system, of which our company is a member, were able to completely carry on its objectives it would, of course, received a certain amount of business booked by its carrier members. The handling of that business through the central organization, of which we would be a part, would be facilitated and we would know before living under that threat of brokerage if it was permitted to have the business of the members diverted to other members through that central agency.

I don't know if I am very clear on that or not.

[fol. 2599]. Q. Assuming there were two carriers who were not members of a national system, and Carrier A had a lading destined for a point beyond the scope of his own authority and proposed to interchange with a carrier at the furthermost point of A's certificate, and the second carrier was to transport the lading, could a lease be used under those circumstances?

A. On an interline movement, I don't think a lease would be necessary.

Q. Suppose A wanted to continue to transport it in his own equipment beyond the scope of his authority.

A. That is the bad feature that is going on in our business in a small or big way all over the United States, and it would seem to me that it would have to be stopped.

This trip lease arrangement that perhaps Carrier A took forward on Carrier B's authority is a bad factor in our business. However, under the national system of arrangements that have grown under federal regulation it has become an essential factor.

As I see it, there is only one thing we can do and that is to have each of the national systems develop their own plan of operation, submit it to the Interstate Commerce Commission and secure approval, but that approval cannot be gained under the present rules and regulations of those contemplated in this proceeding.

Q. I take it you are saying that the rules proposed by the [fol. 2600] Commission will not tend to eliminate the abuses you have described.

A. They will not. As a matter of fact, if enforced to the letter I could see that it would be the death knell of perhaps 75 percent of the members in this industry. In other words, it is regulation we cannot live under unless it is carried out to its logical conclusion of examining the state of the household goods moving business and its practices, all correlated.

We cannot isolate one factor of the operation and place certain requirements on the carriers and leave other obligations and requirements which will literally put us out of business.

Q. You have made three distinctions between the general freight business and household goods business, and one is that household goods transportation is characterized as call-and-demand service. Then you refer to radial operations, and then the peculiar nature of the interline-interchange business.

Has the Association, to your knowledge, requested that the Commission separately hear the household goods industry on the matter of leasing rules and regulations, and

that that be correlated with the inquiry into radial operations?

A. We have not gone into it to the extent you have outlined. We have concurred in the representations of other household goods movers that our particular industry should have a severance and different treatment under this proceeding.

Q. Mr. Wilson, are you familiar with the report of the [fol. 2601] Bureau or Board of Transportation Research established under the Transportation Act of 1940, and a survey and report of that agency made in respect of carriers with limited operating authority on specialized commodities?

A. I have read that report.

Q. Could you briefly state the conclusions of that report as far as it——

Mr. McAuliffe: I object to that question and think it has nothing to do with the purposes we have here today and, furthermore, if they want to prove what was in that report that report should be submitted.

Mr. Burstein: I will withdraw the question and submit it as part of the brief.

By Mr. Burstein:

Q. Is there anything you would like to add to that statement you have made?

A. No, I think not. I am not here to take up time. A lot of other men have their pieces to say and my only thought is to try to open the door to a wide examination of the practices of household goods moving without which leasing by itself means nothing and the investigation cannot succeed, in my opinion.

Exam. Lawton: Off the record.

(Discussion off the record.)

Mr. Burstein: I have no further questions.

Exam. Lawton: Mr. Ellis?

Cross-examination

[fol. 2602] By Mr. Ellis:

Q. Mr. Wilson, are we to understand that your testimony holds exclusively to the household goods industry?

A. Yes.

Q. In making the statements concerning alleged improper practices you did not intend to convey the impression one way or the other that you were testifying about regular route common carriers of commodities generally, were you?

A. Absolutely not.

Mr. Ellis: That is all.

Exam. Lawton: Who is next?

By Mr. McAuliffe:

Q. You are not in a position to testify to anything other than household goods, are you?

A. In no position whatsoever.

Mr. McAuliffe: That is all.

By Mr. Jessup:

Q. Do you find in general use among household goods carriers non-exclusive use trip leases permitting a carrier to take several partial loads?

A. I know of no lease of that kind. We have frequently observed half a dozen leases in effect on the same truck at the same time.

Q. That is what I have in mind.

A. That is not unusual.

Q. You might find several partial loads in one truck, and the truck under lease to several different carriers?

A. That, too, represents a desperate effort to legitima-
[fol. 2603] tize what they know themselves to be an illegal operation.

By Mr. Eldred:

Q. Have you examined the plan of operation that was approved by the Commission in the Allied Van case?

A. Yes. I would say not too definitely. I am not 100 percent familiar with that, just reasonably so.

Q. What you have read of that—would that meet your needs?

A. No, sir.

Q. It would not?

A. No, sir.

Q. In what way would it not meet your needs?

A. In the first place, if I wished to give up, in company with many other carriers who have sweated blood, and their fathers before them; to develop a business—if it is the purpose of federal regulation to force each of us to give up all we have earned and become a part of the national organization, I would say it was fine, but I don't understand that is the purpose of federal regulation under the Transportation Act.

Q. What specific suggestions do you have to offer in this connection, or don't you have any?

A. I don't presume to have the final cure, nor would I attempt to put it down in black and white in a few moments at a hearing of this kind. I would outline it again very briefly.

First, we should approve the interchange or diversion of shipments between carriers participating in joint tariffs. Bills of lading to be appropriately noted to fix carrier [fol. 2604] responsibility.

Secondly, a more complete Interstate Commerce Commission policy in connection with radial certificates which by virtue of narrow pinpoint authority force many carriers to employ leases to overcome the restrictive certificates the Commission has granted to them.

Exam. Lawton: You are just repeating your previous testimony.

The Witness: With a little more formality, sir.

By Mr. Eldred:

Q. I don't want any duplication.

A. I think I have covered all of this.

Q. Would you explain a little more in detail what you mean by that?

A. We have in the City of New York Carriers A, B, and C. I happen to be Carrier A and I book a part load of three rooms moving from New York to Atlanta, Ga. That

customer does not want to wait eight months for me to get another part load in that general direction, so by contract with carrier B who has booked a bedroom suite to Spartanburg, and carrier C who has three rooms to Greensboro—I take the business, they turn the business over to me and all three customers receive the service. That is the interchange of traffic between shippers. Then, of course, when I am in Atlanta I contact the carriers with whom I am associated in an effort to secure a return load which might come from two or three——

[fol. 2605] Q. Do I understand Carriers A, B, and C all have the right to perform the service to Spartanburg?

A. In this instance we assume that to be the case.

Q. The carriers involved in diverting traffic from one to the other should have the right to perform the service under your own authority?

A. I don't think I got the question?

Q. You gave me an instance where three carriers all had the authority to perform the service. When you refer to this question as a whole, in all instances should the carriers have the necessary authority to perform the service before they may divert the traffic one to the other?

A. As I suggested, I believe some consideration should be given to integrating all that sort of brokerage through national system operations. It is being forced upon us and is the trend, and I say it should all be made part and parcel of the plan of operation to be submitted and approved by the Interstate Commerce Commission.

Exam. Lawton: What is the effect of that? That all carriers will have the same scope of interterritorial operation?

The Witness: They have at the present time. I say let's legitimatize this and put it on a practical common sense basis.

By Mr. Eldred:

Q. It is your position, then, that you would want no restrictions on anyone as to where they might book traffic or arrange for transportation of the traffic. Is that cor-

[fol. 2606] rect?

A. I don't think I would be prepared to answer that with

any conclusive "yes" or "no" answer. It is too broad a question.

Mr. Eldred: I believe that is all I have, Mr. Examiner.

By Mr. Kittredge:

Q. Do I understand that Independent Movers is not a carrier?

A. It is not.

Q. What is it?

A. A trade and tariff organization.

Mr. Kittredge: Thank you.

By Mr. Edward Wheeler:

Q. In these leases that you speak of where more than one person makes use of the truck or the vehicle, just how are those leases entered into? How can a man rent his truck to more than one person?

A. It can't be done lawfully, it is not being done lawfully; it is such a ridiculous state of affairs in our form of transportation that I could scarcely describe it to you.

Q. Who is responsible for that? When there is more than one lease which common carrier is responsible for it?

A. The Lord only knows.

Q. Who checks? Do they get together and agree as to who will check the logs of the operator?

A. No. The Interstate Commerce Commission is 100 percent right in beginning this proceeding. All I am fearful of is that they might stop there.

[fol. 2607] Q. Does any common carrier or agent of a common carrier check the vehicle for mechanical safety?

Mr. Eldred: I object to that.

Mr. Lieberman: I join in the objection on the ground he is not qualified.

Mr. Eldred: I am a little fearful that Mr. Wheeler by using the term "common carrier" is attempting to interject that this man may speak for something beyond his own field.

Mr. Lieberman: The same objection on the ground he is not qualified to speak on behalf of the household goods carriers unless on behalf of his own company and its practice.

Mr. Edward Wheeler: I am limiting it to household goods carriers.

Mr. Lieberman: We should test his knowledge as to whether he knows what is being done by the carriers allegedly undertaking such a practice.

The Witness: I don't believe I could answer that.

By Mr. Edward Wheeler:

Q. Do you know whether or not anyone checks—any household goods carrier checks the equipment to determine whether or not it complies with the mechanical requirements?

Exam. Lawton: He already said he didn't know.

Mr. Edward Wheeler: He said he couldn't answer the question. I asked whether anyone——

The Witness: Undoubtedly.

[fol. 2608] Exam. Lawton: You are just guessing. Is that right?

The Witness: Well, I am sure that a great many carriers do.

By Mr. Edward Wheeler:

Q. A great many carriers do. Which one of the many who have a lease is responsible for the check?

A. Frankly, there are so many variations of the leasing problem that you would have to give me a specific example to answer it.

Q. As I understand it, you testified in many instances a vehicle will be leased to certificated common carriers A, B, C, D, E, and F for the transportation of goods subject to their certificate, between points X, Y, and Z at the same time. That is to say that different portions of the vehicle will be occupied by household goods furnished by carriers A, B, C, D, E, F, and G, for transportation between points X and Y, and, in some cases, points beyond. In that situation, and taking that as an example, what is your answer?

A. I would have to pass that decision on to the Supreme Court to determine responsibility. I would not attempt to do it.

Q. You don't know that anyone accepts responsibility in that case?

A. I have no idea. I think it would be very difficult in most cases to determine who was actually liable.

Q. And you don't know who, if any, of A, B, C, D, E, F, and G checks the vehicle to determine if it complies with the mechanical requirements of the Commission's safety regulations?

A. Only in a general way.

[fol. 2609] Q. And your answer is the same with respect to the logs of the driver, I take it?

A. Yes, sir.

Q. It is your opinion, then, that insofar as those aspects of the present regulations are concerned, there is chaos in the industry?

A. It might be described by some people as that. I don't think it is quite as bad as that. I do think we all agree that there are material corrections necessary.

Mr. Edward Wheeler: I have no further questions.

Exam. Lawton: We will recess for lunch until 1:45.

(Whereupon, at 12:30 p. m., a recess was taken until 1:45 p. m. of the same day.)

[fol. 2610] Afternoon Session

Exam. Lawton: Come to order, please. We will resume the hearing.

Are there any additional appearances to be noted?

Mr. Mueller: Emil J. Mueller, representing the Chicago & North Western Railway Company, 400 West Madison Street, Chicago, Ill., protestant.

Exam. Lawton: Resume the cross-examination of the witness.

Robert W. Wilson testified further as follows:

Cross-examination (Resumed)

By Mr. Lieberman:

Q. Mr. Wilson, are you testifying on behalf of Independent Movers & Warehousemen's Association?

A. No, sir.

Q. Your testimony is solely on behalf of yourself and your company, American Van Lines, Inc.?

A. That is correct.

Q. How many vehicles does American Van Lines, Inc., operate?

A. Seven.

Q. What is your gross annual interstate transportation revenue?

Mr. Burstein: Your Honor, I must object to this line of inquiry. I don't think it is addressed to the issues developed on direct examination, and if it is an attempt to attack the credibility of the witness' testimony it seems to me that is not the way that objective is accomplished.

[fol. 2611] Exam. Lawton: Overruled.

The Witness: In excess of $100,000.

By Mr. Lieberman:

Q. Do you recall what it was for 1947?

A. No, sir.

Exam. Lawton: Are you first class carriers?

The Witness: Yes, sir.

By Mr. Lieberman:

Q. You were a class I carrier last year?

A. Yes, sir.

Mr. Lieberman: That is all we have. Thank you very much.

Mr. Burstein: I have one or two questions on redirect.

Redirect Examination

By Mr. Burstein:

Q. Mr. Wheeler inquired of you as to whether or not the present regulations created chaos such as you described. Would you say the regulations that the Commission proposes, or the Bureau proposes, will correct the conditions of chaos and certainly the abuses you have described in both direct and cross-examination?

A. Actually I don't believe—and if I did I didn't intend

to imply that a chaotic condition exists. I would not describe it in that fashion. I say that there are certain diseases prevailing in the industry that need stronger treatment than the regulations proposed in this investigation. Actually these regulations, by themselves, if adopted, would have the effect of literally putting out of business hundreds, if not thousands, of small individual carriers, in my opinion. I [fol. 2612] would say that they were a cure of the problems in the same sense that decapitation might cure a headache.

Q. Can you be a little more specific in respect to the statement that the adoption and enforcement of these regulations would tend to reduce the number of small carriers and to concentrate the business, I assume, in the hands of a relatively small number of carriers who might survive?

A. I refer particularly to the restrictions on our type of business. No. 1 is radial certificates. I am not advocating the eliminating of radial certificates but merely a more liberal policy.

No. 2, the problem of interchange or diversion of shipments between carriers which at the present time has the aspect of brokerage. I say that leases are quite frequently used in our field to overcome these restrictions. That is a principal use of those alleged leases because in many cases they are not properly supported by the records and are not valid.

We have here a case of trying to improve upon a lease which at the present time, and under improvement, will still leave the average independent carrier in a very, very delicate position. It will not cure his ills.

Q. In the earlier part of your testimony you stated that approximately 75 percent of household goods transportation in interstate commerce is conducted by means of leased vehicles. You have also described the leasing arrangement [fol. 2613] and a substantial proportion of the leasing arrangement arises out of interchange between two carriers, as we understood it.

In your opinion, what proportion of the business now carried on an interlease arrangement would be affected by the adoption of the rules and regulations suggested by the Bureau of Motor Carriers?

A. Practically all.

Q. Are we to understand that carriers might lose approximately 75 percent of the return business if rules proposed by the Commission are adopted?

A. They are faced with the choice of returning empty or performing it in an unlawful manner. Either one would be an invitation to disaster, as far as the average mover is concerned.

Q. Is it a correct statement to say that a substantial part of the requirement for leasing arises out of the fact that in the very nature of the household goods business the service is call and demand, and on the return there is no certainty that business can be secured destined to the pinpoint destination authorized by the carrier's certificate?

A. It is all part of the same general picture, no part of which can be isolated.

Q. Do you support the proposed regulations as a means of correcting or eliminating the abuses which you have demonstrated abound in the industry?

A. I am afraid they will not have that effect simply be-
[fol. 2614] cause in the fight for survival no regulation by itself will tend to make men give up living.

Q. You stated a moment ago that you did not suggest the total elimination of radial certificates. Earlier you suggested the approval or sanction of national transportation systems. Did you mean to imply that every carrier ought to be permitted to serve every conceivable point in the United States regardless of the nature of his certificate?

A. No, I don't exactly mean that. I do mean that the trend, both economically and regulatory, is towards coordinated effort as regards national system operations. I believe the carrier and the public alike are best served by some form of cooperation along these lines. This does not mean that the rugged individualist who wants to continue by himself should be forced out of business or into the arms of the system operators.

Q. Are you of the opinion that the adoption of the regulations might, as a matter of economics, result in a loss by the independent carriers of their independent authority?

A. Unquestionably by themselves they will have that effect.

Mr. Burstein: I have no further questions.

Recross Examination

By Mr. Diehl:

Q. Everything you just answered was in reference to—you were talking about household goods carriers only?

A. Strictly. I had no reference to anything else.

Mr. Burstein: I would like to renew a motion previously [fol. 2615] made for severance of the hearing insofar as household goods carriers are concerned.

I know petitions have been filed and denied by the Commission, but I submit on the basis of the testimony adduced the problems of the household goods carriers are clearly distinguishable from those of other carriers, and a thoroughgoing analysis and investigation of those problems calls for a separate and distinct hearing in which those problems should be explored.

Exam. Lawton: Your formal petition is denied.

Mr. Burstein: Thank you, Your Honor, for hearing us out of order, and my thanks to the gentlemen at the table for granting me this courtesy.

Exam. Lawton: You may be excused.

(Witness excused.)

Mr. Eldred: Mr. Examiner, at the hearing at St. Louis, I agreed to furnish parties at the proceeding with copies of Exhibit 30, which was admitted in evidence. I have given copies to all the parties at the counsel table and if anyone else desires a copy I have some additional copies.

Mr. Brashear: Mr. Examiner, the evidence to be adduced here will be in behalf of the Aircraft Associations of America, Inc. All their interest is in transportation as a private carrier and as lessees from common carriers who are obviously the lessors. We have no interest whatsoever in the equipment as lessors.

[fol. 2616] May I call Mr. Crook?

C. HARRIS CROOK was sworn and testified as follows:

Direct Examination

By Mr. Brashear:

Q. Will you state your name and address?

A. C. Harris Crook, 62 LeMay Street, West Hartford, Conn.

Q. What is your occupation, Mr. Crook?

A. My position is general traffic manager of the United Aircraft Corporation, incorporated under the laws of the State of Delaware, with offices at 400 Main Street in East Hartford, Conn.

Q. Describe the United Aircraft Corporation briefly.

A. Divisions of United Aircraft Corporation manufacture internal combustion engines, propellers, and aircraft, including helicopters.

Q. Is the United Aircraft Corporation a member of the Aircraft Industries Association?

A. The United Aircraft Corporation is a member of the Aircraft Industries Association.

Q. Will you briefly describe the Aircraft Industries Association?

A. The Aircraft Industries Association is an association incorporated under the laws of the State of New York. Its members comprise the production of approximately 90 percent of all aircraft and parts in the United States.

[fol. 2617] Q. Have you been authorized to speak for the members of the Aircraft Industries Association generally?

A. I have been authorized.

Q. Now, Mr. Crook, in an order which was issued by the Commission on January 9, the notice that proposed rule making, there were certain suggestions made with respect to leasing. Were those rules, insofar as they related to the leasing of equipment by carriers for hire for private industry considered by the Aircraft Industries Association?

A. They were so considered.

Q. Have you studied the rules, particularly rule 4, and are you now prepared to make a statement of the views of Aircraft Industries Association with respect to the proposals contained in rule 4?

A. I am so prepared.

Q. Will you proceed in your own way to make the statement you are now prepared to make?

A. Proposed rule 4 pertains to the rental of motor vehicles and equipment to private carriers or shippers, and we take certain exceptions or objections in the following way:

Under paragraph 2 we note the forbidding of leases for periods of less than 80 days. This is particularly objectionable because usually trucks are leased because there is need for expedited service substantially superior to that carriers for hire are prepared to offer.

[fol. 2618] Under paragraph 3 we have no particular objection. This has to do with the exclusive use of equipment during the full period of the lease, and it also forbids subleasing.

Paragraph 4 requires the obliteration of all marks on the equipment which establishes its ownership. The proposal is objectionable because it would require lessees to paint out all names on the leased equipment and to repaint the name on the equipment when it expires. We feel that it would impose an undue burden on the short leases. We have no objection, however, to hanging a marker of some kind on the vehicle showing the name of the lessor.

Q. You mean the lessee?

A. We are the lessee. We have no objection to showing the name of the lessor.

Q. Have you any objections to showing your own name on the vehicle?

A. Not a bit except when we are requested not to by the Government.

Q. Just a minute on that, Mr. Crook. That is in connection with your contracts?

A. In connection with the transportation of war material.

Q. Now, proceed.

A. Paragraph 5 requires the inspection of the equipment by a competent person employed by the lessee, and this is not objectionable.

[fol. 2619] Q. Is it customary for you always to have that equipment inspected when it is leased by you?

A. That is correct.

Q. Proceed.

A. The provisions of (b) in paragraph 6, requiring a statement of the method of arriving at the charges assessed for the lease, will not be objectionable if a statement that the charges are on an hourly, daily, or monthly basis is sufficient.

Requiring a complete statement of all the terms, agreements, and practices affecting the charges or value of the rental service is not objectionable.

Paragraph 7, provisions (a) requiring an accurate and complete statement of the terms of the lease, (b) that the equipment covered in the agreement has been inspected, and (c) that the lessee will exercise full control and accept full responsibility for the operation of the equipment, are without objection.

Paragraph 8: There are several provisions of this rule which are objectionable. The rule which would require a shipper to retain in his files a copy of the lease for two years after the termination of the agreement is objectionable. Another objectionable feature of this paragraph is the provision that the original of the contract shall be mailed by the authorized carrier to the Commission five days before its effective date. This provision is quite ob- [fol. 2620] jectionable because in numerous instances the lease is executed and the contract under the lease has been fully performed before the five-day period has elapsed.

Q. Now, Mr. Crook, if there were incorporated in an order issued by the Commission the provisions to which you have objected, what would the action be of the members of the Aircraft Industry?

A. If orders came through from the Commission making it awfully hard for us to lease vehicles from common carriers, we would at times be forced to lease vehicles from persons that do not come under the jurisdiction of the Interstate Commerce Commission.

Q. By that do you mean that if any of these rules interfered with your lease arrangement your action would be to turn to those firms and individuals who are not subject to I.C.C. regulations?

A. That is correct.

Q. Have you any other statement you wish to make at this time, Mr. Crook?

A. That is all.

Mr. Brashear: You may cross-examine.

Mr. Ellis: I have no questions.

Cross-Examination

By Mr. Lordan:

Q. You are traffic manager of your firm?

A. Yes.

Q. I take it you are generally familiar with transportation affairs?

[fol. 2621] A. Yes, sir.

Q. I take it you are generally aware of the objectives of the Commission in the promulgation of the set of rules we have before us.

A. I have a general idea. I am specifically interested, however, as I have testified, as to how these rules affect the private carrier.

Q. The private carrier in that instance being a shipper, one who has goods to transport, who owns those goods.

A. That is correct.

Q. One of the objectives of any regulatory body, Mr. Crook, which has the duty and obligation of regulating transportation agencies for transportation, would be to see that no device or subterfuge had been adopted which would evade tariffs. Wouldn't that be your understanding?

A. That is correct.

Q. Wouldn't you understand that one of the objectives, perhaps, that this Commission has in mind with relation to such rules as may be proper for it to adopt, governing the arrangements between common carriers and shippers, would be to see that the common carrier's rate was not infringed or violated to the detriment of others?

A. I assumed as much by studying these rules. However, I also would believe that the Commission would be extremely interested in protecting the shipper or private carrier as much as he would the rates, rules, and regulations [fol. 2622] upon the common carrier.

Q. If we had, for the purpose of illustrating my question, Mr. Crook, two manufacturers or shippers similarly situated with relation to the transportation of their goods and one of the shippers or manufacturers was able to lease the equipment of a common carrier and hence get a cheaper rate thereby, to the detriment of the second manufacturer or shipper, should that not be one of the objectives that this Commission should look forward to?

Mr. McAuliffe: I object. That calls for a legal conclusion on the part of the witness.

Mr. Lordan: I think it calls for a conclusion as to what this witness' understanding of the transportation policy of this Commission might be.

Mr. McAuliffe: Mr. Examiner, the Commission has found in a number of cases that a shipper may not lease equipment of a carrier in such manner as to have carrier service provided to him, unless the carrier is duly authorized by this Commission. This question is asking the witness if he agrees with those decisions. I think it is a legal conclusion.

Exam. Lawton: Objection sustained.

By Mr. Nisbet:

Q. Mr. Crook, what proportion of your company's traffic moved under lease arrangement in 1947?

A. Very, very little; very little.

[fol. 2623] Q. Can you give us any estimate, percentage-wise?

A. Without a record I would say it would be less than one percent in 1947.

Q. What is the situation up to date in 1948?

A. In 1948, if you wish to compute the figures on tonnage, it would be greater due to the fact that we are moving one of our divisions from Stratford, Conn., to Grand Prairie, Texas. We have leased certain vehicles to move the material from our Stratford plant to the railroad siding in Stratford. The tonnage forwarded on those vehicles would be great.

Q. In the past has your company leased vehicles from others than common carriers by motor vehicle?

A. We have.

Q. What is your reason for not utilizing that source or those sources for your leased vehicles in all instances?

A. In the cases where we have leased vehicles from other persons other than common carriers we have needed specialized equipment.

I might say, however, that should arrangements be made with these garages or persons that are not common carriers—if arrangements could be made with those persons equal to the arrangements that we could obtain from the common carriers, we would lease from those persons operating garages, and so forth.

Q. What arrangements do you obtain from the common carriers that you don't obtain from others?

[fol. 2624] A. The common carriers usually have more equipment at hand. The private garages or contractors usually have heavy equipment and the common carriers usually have regular equipment used in common carrier operations over the road.

Q. Do some or all of the common carriers by motor vehicle from whom you obtained leased equipment serve the company as carriers for hire?

A. In common carrier service, you mean?

Q. Yes.

A. Yes.

Q. Does the company maintain and operate any over-the-road equipment of its own?

A. It does.

Q. This matter of leasing that you have told us about is a sort of a supplemental service to all of the other for-hire service, and your own private equipment that you have told us about?

A. That is correct.

Q. And constitutes a very minor part of your transportation system?

A. In ordinary times, in times of peace, it does constitute a very minor part of our service.

Mr. Nisbet: That is all; thank you.

By Mr. Hickey:

Q. Mr. Crook, with respect to your views on paragraph (b) of rule 4, do you believe that provision will foster or restrain competition among the motor carriers?

[fol. 2625] A. I don't understand exactly what you mean. Do you mean paragraph 2 of rule 4 where it has to do with leases of less than 180 days, and you are asking me whether or not it would foster competition between motor carriers if such a rule was made into a law?

Q. That is right, or restrain.

A. I would not want to answer that question.

Q. Let me phrase the question a little differently: Insofar as your company is concerned, and the costs which you would incur in the hiring of these vehicles, do you think you would have to pay more for such services if this rule went into effect?

A. I don't think we would have to pay more for services because if such a rule was placed into effect I would demand exceptionally low rates for a lease as long as 180 days.

Q. Do you believe, then, for a longer period rather than a trip lease——

A. We don't lease equipment under trip leases.

Q. What is the normal period?

A. Our leases run from—the shortest lease we have had is six months with a 30-day cancellation clause.

Q. I don't understand your objection to the 180 days.

A. The 180 days is objectionable because there may be times that we will have to obtain equipment on very short notice, and even though we might believe we would use the equipment for 180 days we may not use it for a week, and [fol. 2626] we should not be penalized under such a long-term lease as 180 days.

Q. You anticipate that you might be penalized?

A. That is right.

Mr. Hickey: That is all.

By Mr. Edward Wheeler:

Q. Who employes the drivers of the vehicles leased by your company?

A. For all of the equipment leased by our company—it is leased outright. We use our own drivers, we furnish the gas and oil, the insurance—I believe that is all we furnish.

Q. You furnish the maintenance?

A. We furnish the service, not the maintenance.

Q. What is the distinction in your mind?

A. Servicing is gas, oil, grease, changing of tires, common practice, and things of that nature. If we run into split tires there again the lessor furnishes the repairs.

Q. What is the normal method or arrangement in your lease for compensation? On the basis of time, mileage, or what?

A. Time only.

By Mr. Eldred:

Q. As I understand it, when you lease from common carriers is it to operate to points that a carrier does not have authority from the Commission to serve?

A. Not necessarily. It may be that we will have to operate between two points that are served by a number of carriers, but we need such service that the carriers cannot perform, possibly 2 or 3 hours a day, back and forth, full loads [fol. 2627] each way. In many cases our trailers have to be racked so that they fit racks that we roll in and out of the equipment. Ordinarily we don't like to lease. We are not in the motor truck business. We do not want to be in the motor truck business. That is the reason we don't buy the equipment in the first place. It would up our capital assets —or our investment assets—there.

Q. You say you object to a 180-day period. Do you have any period in mind that you might be agreeable to?

A. No, I would not like to make a statement on those lines.

Q. I believe you stated that the minimum lease up to the present time which you have negotiated was for seven days.

A. The minimum that United Aircraft Corporation, or its divisions——

Q. Yes.

A. The minimum lease so far has been six months, I think I testified.